

UNIVERSITY OF NOTRE DAME

NOTRE DAME, INDIANA 46556

Adeyemi, Oluwaseun
Student ID: XXXXX9306

Date Issued: 05-JUN-2023
Page: 2

Birth Date: 02-02-XXXX

| CRSE ID | COURSE TITLE | CRS HRS | GRD | QPTS | UND SEMESTER TOTALS | | | | OVERALL TOTALS | | | |
|---|--------------------------------|------------|-------------|---------|---------------------|---------------|------------|-------|----------------|---------------|------------|-------|
| | | | | | ATTEMP HRS | EARNED HRS | GPA HRS | GPA | ATTEMP HRS | EARNED HRS | GPA HRS | GPA |
| University of Notre Dame Information continued: | | | | | | | | | | | | |
| LAW 75750 | Journal Emerging Technologies | 1.000 | S | 0.000 | | | | | | | | |
| LAW 76101 | Directed Readings | 2.000 | A- | 7.334 | | | | | | | | |
| | Total | | | 50.333 | 16.000 | 16.000 | 15.000 | 3.356 | 47.000 | 47.000 | 46.000 | 3.333 |
| Spring Semester 2023 | | | | | | | | | | | | |
| Law School | | | | | | | | | | | | |
| LAW 70111 | Real Estate Transactions | 3.000 | A- | 11.001 | | | | | | | | |
| LAW 70128 | Copyright Law | 3.000 | A | 12.000 | | | | | | | | |
| LAW 70720 | Corporate Counsel Ext-Instruct | 1.000 | S | 0.000 | | | | | | | | |
| LAW 75710 | Intensive Trial Ad | 4.000 | S | 0.000 | | | | | | | | |
| LAW 75720 | Corporate Counsel Ext-Fieldwrk | 2.000 | S | 0.000 | | | | | | | | |
| LAW 75750 | Journal Emerging Technologies | 1.000 | S | 0.000 | | | | | | | | |
| LAW 76101 | Directed Readings | 2.000 | A | 8.000 | | | | | | | | |
| | Total | | | 31.001 | 16.000 | 16.000 | 8.000 | 3.875 | 63.000 | 63.000 | 54.000 | 3.414 |
| Fall Semester 2023 | | | | | | | | | | | | |
| IN PROGRESS WORK | | | | | | | | | | | | |
| LAW 70201 M | Evidence | 3.000 | IN PROGRESS | | | | | | | | | |
| LAW 70354 M | Labor and Employment Law | 3.000 | IN PROGRESS | | | | | | | | | |
| LAW 70365 M | Federal Criminal Practice | 3.000 | IN PROGRESS | | | | | | | | | |
| LAW 73143 M | African Human Rights Law | 1.000 | IN PROGRESS | | | | | | | | | |
| LAW 73308 M | Islamic Law and Constitutions | 3.000 | IN PROGRESS | | | | | | | | | |
| LAW 73374 M | Reconciliation & Justice | 1.000 | IN PROGRESS | | | | | | | | | |
| LAW 75111 M | Transactional Law Intensive | 3.000 | IN PROGRESS | | | | | | | | | |
| LAW 75750 M | Journal Emerging Technologies | 1.000 | IN PROGRESS | | | | | | | | | |
| | In Progress Credits | 18.000 | | | | | | | | | | |
| ***** TRANSCRIPT TOTALS ***** | | | | | | | | | | | | |
| NOTRE DAME | Ehrs: | 63.000 | QPts: | 184.332 | | | | | | | | |
| | GPA-Hrs: | 54.000 | GPA: | 3.414 | | | | | | | | |
| TRANSFER | Ehrs: | 0.000 | QPts: | 0.000 | | | | | | | | |
| | GPA-Hrs: | 0.000 | GPA: | 0.000 | | | | | | | | |
| OVERALL | Ehrs: | 63.000 | QPts: | 184.332 | | | | | | | | |
| | GPA-Hrs: | 54.000 | GPA: | 3.414 | | | | | | | | |
| ***** END OF TRANSCRIPT ***** | | | | | | | | | | | | |

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CAMPUS CODES

All courses taught at an off campus location will have a campus code listed before the course title.

The most frequently used codes are:

| | |
|----|-------------------------------|
| AF | Angers, France |
| DC | Washington, DC |
| FA | Fremantle, Australia |
| IA | Innsbruck, Austria |
| IR | Dublin, Ireland |
| LA | London, England (Fall/Spring) |
| LE | London, England (Law-JD) |
| LG | London, England (Summer EG) |
| LS | London, England (Summer AL) |
| PA | Perth, Australia |
| PM | Puebla, Mexico |
| RE | Rome, Italy |
| RI | Rome, Italy (Architecture) |
| SC | Santiago, Chile |
| SP | Toledo, Spain |

For a complete list of codes, please see the following website:
<http://registrar.nd.edu/pdf/campuscodes.pdf>

| | | |
|---|---|---|
| I | 0 | Incomplete (reserved for advanced students in advanced studies courses only). It is a temporary and unacceptable grade indicating a failure to complete work in a course. The course work must be completed and the "I" changed according to the appropriate Academic Code. |
| U | | Unsatisfactory work (courses without semester credit hours, as well as research courses, departmental seminars or colloquia or directed studies; workshops; field education and skill courses). |

Grades which are not Included in the Computation of the Average

| | |
|----|---|
| S | Satisfactory work (courses without semester credit hours, as well as research courses, departmental seminars or colloquia or directed studies; workshops; field education and skill courses). |
| V | Auditor (Graduate students only). |
| W | Discontinued with permission. To secure a "W" the student must have the authorization of the dean. |
| P | Pass in a course taken on a pass-fail basis. |
| NR | Not reported. Final grade(s) not reported by the instructor due to extenuating circumstances. |
| NC | No credit in a course taken on a pass-no credit basis. |

For current and historical grade point averages by class, as well as additional information regarding prior grading policies and current distribution ranges, see: <http://registrar.nd.edu/students/gradefinal.php>

GRADING SYSTEM - SEMESTER CALENDAR

Previous grading systems as well as complete explanations are available at the following website:

<http://registrar.nd.edu/students/gradefinal.php>

August 1988 - Present

| Letter Grade | Point Value | Legend |
|--------------|-------------|--|
| A | 4 | |
| A- | 3.667 | |
| B+ | 3.333 | |
| B | 3 | |
| B- | 2.667 | |
| C+ | 2.333 | |
| C | 2 | Lowest passing grade for graduate students. |
| C- | 1.667 | |
| D | 1 | Lowest passing grade for undergraduate students. |
| F | 0 | Failure |
| F* | 0 | No final grade reported for an individual student (Registrar assigned). |
| X | 0 | Given with the approval of the student's dean in extenuating circumstances beyond the control of the student. It reverts to "F" if not changed within 30 days after the beginning of the next semester in which the student is enrolled. |

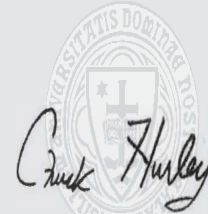
THE LAW SCHOOL GRADING SYSTEM

The current grading system for the law school is as follows: A (4.000), A- (3.667), B+ (3.333), B (3.000), B- (2.667), C+ (2.333), C (2.000), C- (1.667), D (1.000), F or U (0.000).

Effective academic year 2011-2012, the law school implemented a grade normalization policy, with mandatory mean ranges (for any course with 10 or more students) and mandatory distribution ranges (for any course with 25 or more students). For Legal Writing (I & II) only, the mean requirement will apply but the distribution requirement will not apply. The mean ranges are as follows: for all first-year courses (except for the first-year elective, which is treated as an upper-level course), the mean is 3.25 to 3.30; for large upper-level courses (25 or more students), the mean is 3.25 to 3.35; for small upper-level courses (10-24 students), the mean is 3.15 to 3.45.

For current and historical grade point averages by class, as well as additional information regarding prior grading policies and current distribution ranges, see: <http://registrar.nd.edu/students/gradefinal.php>

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CHUCK HURLEY, UNIVERSITY REGISTRAR

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COURSE NUMBERING SYSTEM

Previous course numbering systems (prior to Summer 2005) are available at the following website:

http://registrar.nd.edu/faculty/course_numbering.php

Beginning in Summer 2005, all courses offered are five numeric digits long (e.g. ENGL 43715).

The first digit of the course number indicates the level of the course.

| | |
|----------------|---|
| ENGL 0 X - XXX | = Pre-College course |
| ENGL 1 X - XXX | = Freshman Level course |
| ENGL 2 X - XXX | = Sophomore Level course |
| ENGL 3 X - XXX | = Junior Level course |
| ENGL 4 X - XXX | = Senior Level course |
| ENGL 5 X - XXX | = 5th Year Senior / Advanced Undergraduate Course |
| ENGL 6 X - XXX | = 1st Year Graduate Level Course |
| ENGL 7 X - XXX | = 2nd Year Graduate Level Course (MBA / LAW) |
| ENGL 8 X - XXX | = 3rd Year Graduate Level Course (MBA / LAW) |
| ENGL 9 X - XXX | = Upper Level Graduate Level Course |

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Notre Dame Law School
1100 Eck Hall of Law
Notre Dame, Indiana 46556

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Re: Oluwaseun (Esther) Adeyemi

Dear Judge Sanchez:

I am delighted to write to you in support of Esther Adeyemi's application for a clerkship.

A first-generation professional student, Esther is a very bright student currently completing her JD at Notre Dame. My recommendation is based on Esther's participation in my course in Jurisprudence and conversations that I have had with her since about her studies and plans for the future.

I believe that Esther would be an excellent clerk. She has a keen mind, impeccable work ethic, and is a mature person possessed of good judgment. I also believe Esther to be a person of the highest integrity. As a former clerk, I am familiar with the demands of clerkship and of the special opportunity afforded by the experience. In my opinion, Esther is an eminently suitable candidate.

Esther has been a strong performer, academically, at Notre Dame. She approaches her work with care and conscientiousness and shows impressive depth and range of insight in her written work. Esther came to Notre Dame with a compelling academic record already in hand, having earned her B.A. in Psychology at Penn, where she earned a Thomson Fellowship and was a member of the Onyx Honor Society. Esther has achieved a commendable 3.32 GPA at Notre Dame, showing consistency in the results achieved in her courses.

Esther offers in abundance qualities that are of value in a clerkship candidate. She has the analytical, research and writing abilities that are prized in clerks. She has also consistently shown good character, having invested consistently over time in community outreach and other service projects. For example, at Notre Dame, she has been on the executive board of BLSA and has served as an Assistant Rector in one of our residence halls (a coveted position reserved for high achievers who show good character and leadership qualities). Esther was also a Peace Corps volunteer in Peru, promoting general education and nutrition initiatives during her period of service.

I know Esther well and so can confidently convey her to you as a person of commendable character. She has been utterly forthright in all of my dealings with her, is even-tempered and is possessed of good judgment.

For these reasons amongst others, I give Esther an enthusiastic recommendation. If you have any questions, please be in touch.

Yours sincerely,

Paul B. Miller
Professor and Associate Dean
Notre Dame Law School

Paul Miller - paul.miller@nd.edu - 574-631-6729

Notre Dame Law School
1100 Eck Hall of Law
Notre Dame, Indiana 46556

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Re: Oluwaseun (Esther) Adeyemi

Dear Judge Sanchez:

I am writing to recommend Esther Adeyemi for a clerkship in your chambers. Esther is a wonderful, admirable and bright young woman with a terrific legal career ahead of her. It would be terrific if she could start that career in your chambers.

A bit about Esther. She was born in Nigeria, but immigrated to the United States when she was a young child. She was raised near Atlanta and attended the University of Pennsylvania as an undergraduate. When her family immigrated, both of her parents worked menial jobs – her dad in a factory and her mom at Walmart – but they eventually both earned graduate degrees (Ph.D.s) in the United States. She's very proud of her parents and her Nigerian heritage. Following her graduation from Penn, she entered the Peace Corps, and spent time as a teacher and mentor in a village in the Andes in Peru. The pandemic cut short her time there, but she remains close to her host family.

During her time at Penn, Esther became interested in law school for a variety of reasons. She enrolled in legal studies classes and found them interesting and challenging, but she also volunteered to work with disadvantaged students in underserved high schools and found herself wanting to learn how to be a better advocate for them. Ultimately, she decided that law would allow her to combine her love for the academics of legal studies with her love of being an advocate for people who could not help themselves. I know that she will carry these things with her throughout her career.

Esther was a student in my Education Law seminar during the Fall 2022 semester. She received an A- in the class, which was a good grade because I gave only two "As." I give the students the option of writing either multiple short papers or one long research paper. She opted for the former, and her papers were well written and interesting. I particularly appreciated the way that she integrated aspects of her experience working with disadvantaged high school students into the analysis. In class, I came to count on her for her thoughtful questions and comments. She was always willing to question her own assumptions, and willing to respectfully challenge others' views. Both were important in a class that covered many hot-button issues (including race, sex and gender-identity, free speech, and religion).

Last semester, Esther asked me if I would supervise a directed reading on pandemic learning losses and policy responses to them. Not surprisingly, her final product was thoughtful, thoroughly researched and well written. I learned a great deal from it, and I enjoyed working with her on the project. She earned an A on the paper. Overall, Esther has done well at Notre Dame, and she is on track to graduate with honors. Her transcript reflects an upward trajectory, which I expect will continue.

On a personal level, Esther is delightful. I am sure that you'd love to have her in chambers, that she would quickly become a favorite of your court staff and make friends with her co-clerks. I also know that she hopes to return home to Georgia to practice, and I expect that she will rise to be leader in the local bar in relatively short order.

Thank you for considering Esther's clerkship application. Please let me know if I can further assist your evaluation of her in any way. I am available at by cell at (574) 261-0628 or by email at ngarnett@nd.edu.

Sincerely,

Nicole Stelle Garnett
John P. Murphy Foundation Professor of
Law

Nicole S. Garnett - ngarnett@nd.edu

Oluwaseun (Esther) Adeyemi
oadeyemi@nd.edu

Writing Sample

This writing sample is a summary judgment motion I wrote for my first-semester legal writing class in the fall semester of 2021. This motion has not been edited by any other person and is my own work product.

The objective of this assignment was to effectively analyze precedent cases and statutes to write a summary judgment motion. For context, Ms. Cruz, our client was alleged to have been liable for statutory invasion of privacy after she posted a photograph of her landlord, Mr. Sullivan sleeping in the front courtyard of the apartment building.

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK
SUPERIOR COURT

| | | |
|----------------------|---|--------------------|
| Brendan F. Sullivan, | : | |
| | : | Case No: CV21-2135 |
| Plaintiff, | : | Motion for Summary |
| | : | Judgment |
| v. | : | |
| | : | |
| Gabriela M. Cruz, | : | |
| | : | |
| Defendant. | : | |

DEFENDANT’S MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Defendant Gabriella Cruz (hereinafter referred to as “Ms. Cruz”) respectfully moves this Court for summary judgment on Plaintiff Brendan Sullivan’s Complaint (hereinafter referred to as Plaintiff). Summary judgment for Ms. Cruz is warranted because Plaintiff has raised no genuine issues of material fact and Ms. Cruz is entitled to summary judgment as a matter of law.

Plaintiff filed this action on September 26, 2021. Ms. Cruz’s answer was timely filed. Plaintiff alleges that Ms. Cruz violated the Invasion of Privacy statute §1B and requests the removal of the post made on the Tufts Housing Board. Ms. Cruz did not disclose a private fact of Plaintiff and even if she had, she had a legitimate countervailing interest to do so; therefore, she is entitled to summary judgment as a matter of law.

STATEMENT OF FACTS

Ms. Cruz, a volunteer at a local primary care clinic and second-year medical student at Tufts University Medical School in Boston, lives in an apartment at 175 Seaver Place, Boston, Massachusetts, owned by Plaintiff. (Cruz Dep. 2). Since moving to the apartment, Ms. Cruz had been having recurring issues with her water where she had “trouble getting enough water for a shower and that even when there was water it wasn’t hot enough” which she brought to Plaintiff’s attention. (Sullivan Dep. 7). Admittedly, Plaintiff said that the water issue “seem[ed] like it’s gotten worse” and that he “[knew he] should replace the water heater,” (*Id.* 7). Plaintiff admitted that he had been putting off fixing it and began to avoid Ms. Cruz, but on Friday, September 3, he finally agreed to perform the duties of a tenant and check on the issues that Ms. Cruz had been having with her apartment. (*Id.* 7). Ms. Cruz rearranged her schedule and missed a review session in one of her classes to be able to meet Plaintiff, but he did not arrive at her apartment or explain why he never showed up (Cruz Dep. 4). Plaintiff later revealed that he had gotten “held up dealing with the furnace and never made it up to her apartment that day.” (Sullivan Dep. 7).

The incident that brought this case occurred on a Sunday afternoon, two days after Plaintiff did not show at Ms. Cruz’s apartment. She had spent the beginning part of the day working on an important lab project that was due the following Monday and had decided to go on a run later in the afternoon. After she finished her run on a “hot and muggy day,” she went back to her apartment and tried to take a shower, but the water was not running. (Cruz Dep. 4). Unfortunately for Ms. Cruz, she was accustomed to water not

running in her apartment and she frequently had to leave her home at five am to shower at school and then go straight to class or the library. (*Id.* 8). Because the water was not running, Ms. Cruz decided to leave her home and go back to school, just to shower. On Ms. Cruz's way to school, she noticed Plaintiff asleep in a lounge chair in the courtyard of the apartment building. Earlier in the day, Plaintiff and a few of his friends had been drinking and eating pizza while watching the game in his home but moved to the courtyard when the game ended. He had fallen asleep, and his friends had left him to clear the empty boxes and pizza cans, and this is how Ms. Cruz found him. He was unshaven and fully clothed: dressed in basketball shorts, a Red Sox sweatshirt, and a baseball cap. (Sullivan Dep. 6-7). As Ms. Cruz was standing by the entrance to the courtyard, just about "a step or two in from" the sidewalk, she took a picture of Plaintiff sleeping with the intention of just sending it to a friend to lament on her troubles. (Cruz Dep. 5). The courtyard where Plaintiff was located is paved and about twenty-five to thirty feet from the street. The entrance is "open all the time" and about eight feet wide and large enough to fit a conversion van with six feet high pillars and two ten to twelve feet high dogwood trees that have thin trunks. (Sullivan Dep. 3-6). Separating the courtyard from the street is a brick wall that is about five feet tall. (*Id.* 5). When Ms. Cruz took the picture, there was pedestrian traffic with people walking by and "plenty of traffic on the street, cars, and public buses." (Cruz Dep. 6). On the day of the incident, other tenants walking through the courtyard had in fact seen Plaintiff as he lay there. (Johnson Dep. 3).

Although Ms. Cruz took the photo to just send to one friend, she ended up posting it on the Tufts electronic website because she heard other students talking about renting

from her landlord and she “felt like [she] owed a responsibility to other students to let them know there are serious drawbacks to the building.” (Cruz Dep. 7). The entry was titled “Don’t rent from this man!” with the body of the message reading “[w]arning, all Tufts students, don’t be taken in by the great rent and location. This place has horrible plumbing and the landlord hasn’t bothered to fix anything.” She put the picture that she took of Plaintiff sleeping with beer cans and pizza boxes all around him with the caption “this is how the landlord spends his day! No wonder nothing gets fixed around here.” (*Id.* 7-8). The electronic housing website where she published this post is “limited to registered Tufts University students” and is only accessible with a student identification number and password. (Wilson Dep. 2). It is available for all Tufts students, but an even smaller group uses it because it is for off-campus listings and most undergrads live on campus. (*Id.* 2). On this evidence, there are no material facts in dispute and Ms. Cruz’s Motion for Summary Judgment should be granted as she is entitled to it as a matter of law.

ARGUMENT

Summary judgment is granted when “there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Mass. R. Civ. P. 56(c). “[T]he burden is on the plaintiff to present ‘specific facts which establish that there is a genuine, triable issue, or summary judgment... will be entered against [it]’” *NG Bros. Constr. v. Cranney*, 766 N.E.2d 864, 872 (Mass. 2002). Summary judgment is mandated “after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which the party will bear the burden of proof at trial.” *Ball v.*

Walmart, 102 F. Supp. 2d 44, 49 (D. Mass. 2000). Plaintiff has failed to prove that Ms. Cruz disclosed a private fact and that there was not a legitimate countervailing interest; therefore, Ms. Cruz is entitled to summary judgment as a matter of law.

The Invasion of Privacy statute §1B provides only when there has been an “unreasonable, substantial or serious interference” on privacy shall a person have an actionable claim of invasion of privacy. Mass. Gen. Laws ch. 214, §1B (2019). Courts have interpreted this to mean that the plaintiff has the burden to prove that “the invasion must be both unreasonable and serious or substantial.” *French v. United Parcel Serv., Inc.*, 2 F. Supp. 2d 128, 131 (D. Mass. 1998) citing *Schlesinger v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 567 N.E.2d 912 (Mass. 1991). Courts have taken the stance that “in an industrial and densely populated society, some intrusions into one’s private sphere are inevitable.” *Schlesinger*, 567 N.E.2d at 915. Because of this, courts employ a balancing test to determine when a public disclosure of a private fact is an actionable claim under the right of privacy statute. Plaintiff has the burden to prove that the disclosure was not only of a “highly personal or intimate nature” but there also exists no “legitimate, countervailing interest.” *Bratt v. Int’l Bus. Machs. Corp.*, 467 N.E.2d 126, 133-34 (Mass. 1984). Because there are no material facts in dispute and Ms. Cruz did not disclose a private fact without a legitimate countervailing interest, she is entitled to summary judgment as a matter of law.

I. MS. CRUZ DID NOT DISCLOSE A PRIVATE FACT ABOUT PLAINTIFF BECAUSE HE HAD NO EXPECTATION OF PRIVACY AND THE DISCLOSURE WAS NOT OF A HIGHLY PERSONAL OR INTIMATE NATURE; THEREFORE, MS. CRUZ IS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW.

“The law does not provide a remedy for every annoyance that occurs in daily life. Many things which are distressing or may be lacking in propriety or good taste are not

actionable.” *Ball*, 102 F. Supp. 2d. at 51. Moreover, “[i]f the defendant’s action is not found to be ‘substantial’ or ‘serious,’ relief is precluded under G.L. c. 214 § 1B.” *Id.* at 50. Plaintiff must show that his expectation of privacy was not reduced when Ms. Cruz took the photograph and that the photograph was of a highly personal or intimate nature. Based on the undisputed facts of this case, Plaintiff is unable to do so.

A. Because Plaintiff was in an open courtyard where other people could and did see him, his expectation of privacy was relinquished.

The courts recognize that “a person may relinquish a privacy right by engaging in certain activities, or by placing himself in certain contexts where his legitimate expectation of privacy is reduced.” *Schlesinger*, 567 N.E.2d at 915-16. In *Cefalu*, the court held that the publicization of the plaintiff’s picture in a newspaper was not an invasion of privacy because Cefalu was in a public space and therefore had no expectation of privacy. *Cefalu v. Globe Newspaper Co.*, 391 N.E.2d 935, 939 (Mass. App. Ct. 1979). Cefalu was waiting in an unemployment line to act as an interpreter for a non-English speaking friend when a reporter from the Boston Globe took a photo of the line. Boston Globe printed out two publications on unemployment in which viewers could identify Cefalu. The court held that “[t]he appearance of a person in a public place necessarily involves doffing the cloak of privacy which the law protects.” *Cefalu*, 391 N.E.2d at 939. The court further stated that “[t]he Restatement distinguishes between publication of a picture taken on a public street (not an invasion of privacy) and a picture taken in a private place (which would be an invasion of privacy)” *Id.* at 939. Similarly, the *French* court ruled that disclosure of information in plaintiff’s home was not an invasion of privacy because plaintiff had a reduced expectation of privacy since his act was seen by other employees that had no duty to keep the action confidential. *French*, 2

F. Supp. 2d at 131. The plaintiff, an employee of the defendant's organization, invited other employees to attend a beer festival. While in the plaintiff's home, one of the employees got very drunk and had to be taken to the hospital. French reported the incident and was eventually demoted from his position. This was an occurrence that any of the other employees present at French's home could have disclosed, so the incident was "not a private affair of French alone." *Id.* at 131.

In this case, Plaintiff had no expectation of privacy. This case is comparable to *Cefalu* where the court held that the reporter taking a picture of the plaintiff in the unemployment line was not an invasion of privacy because Cefalu was in public and therefore had no expectation of privacy. Although Plaintiff was technically in his home, he was in an open courtyard in which other tenants and the public at large could see him. This case also mirrors *French* where the court ruled that plaintiff had a reduced expectation of privacy because the act was seen by other employees and any one of them could have disclosed the incident of another employee getting very drunk in French's home. Here, on the day of the incident, other tenants had in fact seen Plaintiff sleeping in the lounge chair. The public at large also could have seen Plaintiff and into the courtyard as the wall blocking it off from the sidewalk was only about five feet tall, allowing an adult of average height to easily be able to see over the wall. The courtyard also had a large opening that was open all the time and big enough to fit conversion trucks. In fact, Ms. Cruz took the picture from the opening, just a few steps from the sidewalk that was frequently busy with pedestrians. By being in this open courtyard where he could easily be seen by others, Plaintiff relinquished his expectation of privacy, so Ms. Cruz is entitled to summary judgment as a matter of law.

- B. The photograph taken of Plaintiff fully clothed and sleeping with empty pizza boxes and beer cans all around him in an open courtyard was not of a highly personal and intimate nature.

The Invasion of Privacy statute makes the distinction that “private facts are not necessarily simply those that are not public,” rather they are facts that are of the “highly personal or intimate nature.” *French*, 2 F. Supp. 2d at 131. In *Wiseman*, the court granted an injunction of showing a documentary to the public because the facts shown in the documentary were private. *Commonwealth v. Wiseman*, 249 N.E.2d 610 (Mass. 1969). Defendant went to a mental health facility to get footage for a documentary that he was creating. He took pictures of the mental health patients in the most personal and private situations, including some where they were naked. The court held that these facts were highly intimate and personal as “the film shows many inmates in situations which would be degrading to a person of normal mentality and sensitivity.” *Wiseman*, 249 N.E.2d at 615. Similarly, the *Bratt* court affirmatively answered the question on whether the disclosure of medical information could be considered a highly intimate or private fact. *Bratt*, 467 N.E.2d at 129. Plaintiff, an employee at defendant’s corporation, frequently used the open-door policy to air his grievances about the company. After being diagnosed with paranoia by the company’s general practitioner, this medical information was passed along to other supervisors. The court stated that there are certain situations that “could exist where an intracorporate disclosure of intrusive facts would give rise to an invasion of privacy claim.” *Id.* at 134. *See Cefalu*, 391 N.E.2d at 939 (“The notion of right of privacy is founded on the idea that individuals may hold close certain manuscripts, private letters, family photographs, or private conduct which is no business of the public and the publicizing of which is, therefore, offensive.”)

Here Ms. Cruz did not disclose a highly intimate or personal fact about Plaintiff. This case is clearly not like *Wiseman* where the court held that the documentary showing pictures of mental health patients in compromising positions was a disclosure of private facts. Although the picture of Plaintiff was unflattering as he was unshaven, wearing shorts and a baggy sweatshirt with beer cans all around him, the picture was not personal or highly intimate to the extent as in *Wiseman* where patients were photographed naked. Similarly, the fact disclosed in this case is not comparable to the medical information disclosed in *Bratt* in which the court answered the question that the disclosure of medical information can be considered a highly personal or intimate fact. A photograph of Plaintiff sleeping and fully clothed in an open courtyard is not comparable to the disclosure of private medical information. Additionally, the picture taken is not of the offensive nature which has no business of being in public like the examples stated in *Cefalu*. cf. *Cefalu*, 391 N.E.2d at 939. Ms. Cruz did not disclose a highly personal or intimate fact; therefore, she is entitled to summary judgment as a matter of law.

II. EVEN IF MS. CRUZ HAD DISCLOSED A PRIVATE FACT ABOUT PLAINTIFF, THE LEGITIMATE COUNTERVAILING INTEREST OF WARNING OTHERS FROM RENTING FROM PLAINTIFF OUTWEIGHS HIS RIGHT TO PRIVACY AND SHE IS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW.

If a fact is highly personal or intimate, courts “balance the extent to which the defendant violated the plaintiff’s privacy interest against any legitimate purpose the defendant may have had for the intrusion.” *Polay v. McMahon*, 10 N.E.3d 1122, 1127 (Mass. 2014). The *Bratt* court answered the question that an inter-office communication to supervisors would likely not be considered an invasion of privacy because the employer had a legitimate reason of disclosing the medical information. The court

answered the certified question that although Bratt's medical information was likely a private fact, it would likely not be an actionable claim of invasion of privacy because the defendant had a legitimate countervailing interest being that "employers... have a legitimate need... to determine whether or not their employees are professionally, physically, and psychologically capable of performing their duties." *Bratt*, 467 N.E.2d at 133. Similarly in *Dasey*, the court affirmed the ruling of summary judgment on the grounds that Dasey's former employer had a reasonable right to know about Dasey's past drug usage that outweighed any possible disclosure of privacy. *Dasey v. Anderson*, 304 F.3d 148 (1st Cir. 2002). During Dasey's application process as a state trooper, he affirmatively answered that he did not use any illegal drugs, but this was later found to be not true when his employer was given a videotape showing plaintiff using illegal drugs. The court held that "defendant's modest intrusion into Dasey's privacy... was entirely reasonable in light of their compelling interest in verifying the truthfulness of his prior assurances regarding illegal drug use." *Dasey*, 304 F.3d at 154. Similarly in *Wiseman*, the court granted the injunction of the showing of the documentary because "the right of the public to know does not justify the unauthorized use of pictures showing identifiable persons." *Wiseman*, 249 N.E.2d at 613. The defendant went to a mental health facility and took pictures of mental health patients in compromising positions with the purported intention of alerting the public of treatment in these facilities. Although the documentary was not suitable for the public at large, the court held that the film could be shown to "organizations dealing with the social problems of custodial care and mental infirmity," *Id.* at 618. *See Bratt*, 467 N.E.2d 126 (The disclosure of the medical information was only shown to supervisors and the court held that it was not an invasion of privacy.).

Here Ms. Cruz had a legitimate reason for publicizing the photograph that she took of her landlord that outweighed Plaintiff's right to keep the picture private. Like *Bratt* where the court held that the employer probably had a countervailing interest to disclose the health information of their employee and therefore unlikely to count as an invasion of privacy, Ms. Cruz wanted to alert other members of her school community of the dangers of renting with Plaintiff. She was having serious problems with her water and had many instances where Plaintiff was not being responsive to her issues, even completely skipping the scheduled day he was to come and check on her water. Like *Dasey*, where the court held that the employer's right to know of their employee's drug usage outweighed Dasey's right to keep the videotape of him using drugs private and was not an unreasonable intrusion into his privacy, the picture of Plaintiff was not an unreasonable intrusion into his privacy. Ms. Cruz had been having serious problems with her housing, issues so large that she could not even shower in her own home and had to leave for school hours earlier just to shower and get ready for her day. She felt that it was her responsibility to warn other students of the dangers of renting from Plaintiff. She was not a disgruntled tenant on a malicious rampage, but a responsible Tufts community member that wanted to warn other students of the problems that she was facing. Furthermore, Ms. Cruz only posted the picture on a website accessible to other Tufts students specifically looking for housing. This case is comparable to *Wiseman* and *Bratt* in which the courts held that the showing of the documentary and disclosure of medical information was suitable for a smaller subset of people that had a specialized need to know of the information. Ms. Cruz did not post Plaintiff's picture on a larger public forum for the world to see, but on a password protected private message board that was

only accessible to other Tufts students that were specifically looking for housing. Ms. Cruz is entitled to summary judgment as a matter of law because she had a legitimate countervailing interest to post the picture and she only posted it for a specific group of people.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that this Court grant the Summary Judgment Motion.

Respectfully submitted,

_____Oluwaseun Adeyemi

Counsel for Defendant, Gabriela Cruz

Applicant Details

| | |
|----------------------|---|
| First Name | Mohammed |
| Middle Initial | A |
| Last Name | Al-Shawaf |
| Citizenship Status | U. S. Citizen |
| Email Address | ma2112@georgetown.edu |
| Address | <div> <div>Address</div> <div> <div>Street</div> <div>6630 Blair Rd NW</div> <div>City</div> <div>Washington</div> <div>State/Territory</div> <div>District of Columbia</div> <div>Zip</div> <div>20012</div> <div>Country</div> <div>United States</div> </div> </div> |
| Contact Phone Number | 8314022229 |

Applicant Education

| | |
|--|---|
| BA/BS From | University of California-Berkeley |
| Date of BA/BS | May 2009 |
| JD/LLB From | Georgetown University Law Center |
| | https://www.nalplawschools.org/employer_profile?FormID=961 |
| Date of JD/LLB | May 10, 2024 |
| Class Rank | School does not rank |
| Does the law school have a Law Review/Journal? | Yes |
| Law Review/Journal | No |
| Moot Court Experience | No |

Bar Admission

Prior Judicial Experience

| | |
|--------------------------------------|----|
| Judicial Internships/ Externships | No |
| Post-graduate Judicial Law Clerk | No |

Specialized Work Experience

Recommenders

Garland, Rachel
RGarland@clsphila.org
Chertoff, Meryl
mjc87@georgetown.edu
9083707082

Super, David
das62@georgetown.edu
202 525 9132

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Mohammed Al-Shawaf
6630 Blair Road NW
Washington, D.C. 20012

June 10, 2023

The Honorable Juan R. Sánchez
14613 U.S. Courthouse
601 Market Street, Courtroom 14-B
Philadelphia, PA 19106

Dear Chief Judge Sánchez,

I am a rising third-year student at Georgetown University Law Center and am writing to apply for a 2024 term clerkship. I am interested in clerking in your chambers because of the diversity of your public interest experience, from legal aid attorney to public defender to your career on the bench. Although my path is different, I also have a diverse professional background motivated by how I could make an impact. Additionally, I worked last summer at Community Legal Services (CLS) in Philadelphia and would welcome the opportunity to return and clerk on the Eastern District of Pennsylvania.

I am a nontraditional applicant pursuing a district clerkship because I have always been motivated to serve my community. As the son of Iraqi-Americans whose lives were upended by war, I remember my parents having to work multiple jobs and struggling to make ends meet when I was growing up. That experience stuck with me and inspired me to work with people, especially from vulnerable communities, to build capacity and connections to economic opportunity. Prior to law school, I worked for ten years in small and large companies managing social and economic impact programs and partnerships. Although I am proud of the initiatives I led—from increasing access to finance for small and disadvantaged businesses to creating training and job pathways for diverse communities—I believed I could make a greater impact by working directly in the public interest.

Since entering law school, I have prioritized practicing law in different public interest settings, both as an advocate and at various levels of government, including as a full-time law clerk at the White House Counsel's Office. I am fascinated by how our system of government works and how it can be more just, fair, and equitable. I am interested in clerking because I want to gain a first-hand perspective on judicial deliberation and the way judges effectuate justice, both among the parties and in their community. I believe that the diversity of my experience before and during law school and my commitment to public service would make me a unique and valuable addition to your chambers.

I have attached my resume, transcripts, and writing sample. Letters of recommendation from Professor David Super (das62@georgetown.edu), Professor Meryl Chertoff (mjc87@georgetown.edu), and my legal supervisor at CLS, Rachel Garland (rgarland@clsphila.org), will be sent under separate cover from Georgetown Law's Clerkship Office.

Thank you and I look forward to the opportunity to interview with you and your chambers staff.

Respectfully,

Mohammed Al-Shawaf

Mohammed Al-Shawaf

6630 Blair Rd NW, Washington, D.C. 20012 | ma2112@georgetown.edu | 831-402-2229

EDUCATION

Georgetown Law School, Washington, D.C. (2021—2024)

J.D. Candidate, 3.65 cumulative GPA (3.85 2L year)

Honors: Top 10% (2L year, prior year cutoff); Anne Fleming Legal Services Fellow; Renne Public Law Fellow

University of California, Berkeley, Berkeley, CA (2005—2009)

B.S. in Business Administration, 3.91 GPA

Honors: *summa cum laude*; Dean's List for five semesters

LEGAL EXPERIENCE

California Department of Justice, Consumer Protection Section (6/2023—Present)

- Contribute to multistate investigation involving novel technology and consumer protection legal issues.

The White House Counsel's Office (1/2023—5/2023)

- Researched and drafted vetting memos for potential judicial and other Senate-confirmed nominees.
- Prepared memos involving novel legal questions and applicable case, statutory and regulatory precedent.
- Reviewed proposed agency rules and recommended areas for input based on White House equities.
- Conducted legal research and contributed to guidance related to the Administration's equity policies.

Consumer Financial Protection Bureau, Legal Division (8/2022—11/2022)

- Researched and drafted parts of an appellate brief related to debt practices of national student loan trust.
- Wrote and presented memo to General Counsel to inform untested application of Bureau's authority.

Community Legal Services, Housing Unit (5/2022—8/2022)

- Managed pre-trial caseload of clients facing eviction, conducting intake and advising on defenses.

U.S. House Committee on Oversight and Reform, Economic Policy (1/2022—4/2022)

- Co-led significant consumer product investigation, contributing to successful legislative fix.

Georgetown Law Center on Poverty and Inequality (8/2021—12/2021; 6/2022—8/2022)

- Researched and co-wrote major report on effect of market power on racial and economic inequality.

OTHER PROFESSIONAL EXPERIENCE

WeWork, New York, NY

Director of Impact and Public Policy Partnerships (7/2017—8/2020)

- Launched global refugee initiative, training and hiring hundreds of refugees and serving as spokesperson.
- Scaled a local veterans program into a national veteran and military spouse business incubator in 20 cities, growing the businesses of 400+ entrepreneurs while leading a team of 50 staff and volunteers.
- Developed and launched a national economic opportunity research partnership with the Aspen Institute.
- Managed a high-performing team, including consultants and agencies, and a \$1M budget.

Getaround, San Francisco, CA

Head of Public Policy and Business Development (3/2015—6/2017)

- Built partnerships with policymakers and community groups in 10 cities to grow carsharing market.
- Managed government grant and pilot program, including with the SFMTA and the City of Chicago.
- Negotiated and launched a technology partnership with Toyota, resulting in a \$10M strategic investment.

SustainAbility, Washington, D.C., London, UK & San Francisco, CA

Manager and Head of Trends and Cities Practices (9/2010—2/2015)

- Managed ESG strategy projects for F500 companies in mobility, energy, and cities practices.
- Managed global research initiatives, including a trends team and a quarterly ESG survey partnership.

Kiva, Ramallah, Palestine

Kiva Microfinance Fellow with CHF International and FATEN (9/2009—1/2010)

- Executed 20-week work plan in 10 weeks, streamlining the loan processes of the two largest microfinance lenders in country and growing the number of loans dispersed to micro-entrepreneurs.

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Mohammed Al-Shawaf
GUID: 813478545

Course Level: Juris Doctor

Entering Program:

Georgetown University Law Center
Juris Doctor
Major: Law

Subj Crs Sec Title Crd Grd Pts R

----- Fall 2021 -----
LAWJ 001 93 Legal Process and Society 4.00 B+ 13.32

Naomi Mezey

LAWJ 002 93 Bargain, Exchange, and Liability 6.00 A- 22.02

David Super

LAWJ 005 30 Legal Practice: Writing and Analysis 2.00 IP 0.00

Jessica Wherry

LAWJ 009 31 Legal Justice Seminar 3.00 B+ 9.99

Kevin Tobia

EHrs QHrs QPts GPA
Current 13.00 13.00 45.33 3.49

Cumulative 13.00 13.00 45.33 3.49

Subj Crs Sec Title Crd Grd Pts R

----- Spring 2022 -----

LAWJ 003 93 Democracy and Coercion 5.00 B+ 16.65

Louis Seidman

LAWJ 005 30 Legal Practice: Writing and Analysis 4.00 B+ 13.32

Sherri Lee Keene

LAWJ 007 93 Property in Time 4.00 A- 14.68

Daniel Ernst

LAWJ 008 32 Government Processes 4.00 A 16.00

Glen Nager

EHrs QHrs QPts GPA
Current 17.00 17.00 60.65 3.57

Annual 30.00 30.00 105.98 3.53

Cumulative 30.00 30.00 105.98 3.53

Subj Crs Sec Title Crd Grd Pts R

----- Fall 2022 -----

LAWJ 1491 110 ~Seminar 1.00 A 4.00

Alexander Blanchard

LAWJ 1491 112 ~Fieldwork 3cr 3.00 P 0.00

Alexander Blanchard

LAWJ 1491 19 Externship I Seminar (J.D. Externship Program) NG

Alexander Blanchard

LAWJ 165 07 Evidence 4.00 A- 14.68

Gerald Fisher

LAWJ 410 05 State and Local Government Law 3.00 A 12.00

Meryl Chertoff

LAWJ 565 05 Globalization, Work, and Inequality Seminar 3.00 A 12.00

Alvaro Santos

In Progress:

EHrs QHrs QPts GPA
Current 14.00 11.00 42.68 3.88

Cumulative 44.00 41.00 148.66 3.63

-----Continued on Next Column-----

Subj Crs Sec Title Crd Grd Pts R

----- Spring 2023 -----

LAWJ 1447 08 Mediation Advocacy Seminar 2.00 A 8.00

LAWJ 1492 41 Externship II Seminar (J.D. Externship Program) NG

LAWJ 1492 89 ~Seminar 1.00 A 4.00

LAWJ 1492 91 ~Fieldwork 3 cr 3.00 P 0.00

LAWJ 215 07 Constitutional Law II: Individual Rights and Liberties 4.00 A- 14.68

----- Transcript Totals -----

EHrs QHrs QPts GPA

Current 10.00 7.00 26.68 3.81

Annual 24.00 18.00 69.36 3.85

Cumulative 54.00 48.00 175.34 3.65

----- End of Juris Doctor Record -----



May 23, 2023

Re: Mohammed Al-Shawaf Clerkship Application

Dear Judge,

I am writing to highly recommend Mohammed Al-Shawaf for a clerkship in your chambers. I am the Managing Attorney of the Housing Unit at Community Legal Services in Philadelphia. Community Legal Services is a nonprofit organization providing direct legal representation, advocacy and community education for low-income Philadelphians for a wide range of civil legal issues. Mohammed worked in the Housing Unit as a law student intern after completing his first year of law school at Georgetown University. I oversaw Mohammed's work during our ten-week internship program and have kept in touch with him since working together.

We selected Mohammed for our summer law student internship program because of the dedication he had shown prior to law school to understanding how systemic inequality historically and currently marginalizes minority communities and his work to address these inequalities. With minimal supervision, Mohammed managed a caseload of clients facing eviction prior to their hearing dates. Mohammed interviewed the clients, advised them of their rights and legal defenses and assisted supervising attorneys with trial preparation and settlement negotiation in Municipal Court. Being a successful attorney at Community Legal Services requires someone who is adept at leveraging legal, policy and advocacy tools to advance protections for our clients. Mohammed's past experience leading social impact projects in large and small organizations and his commitment to economic justice across his work experience and in law school made him a valuable asset to CLS.

Because of his experience, enthusiasm and proactive nature, Mohammed also made himself an important contributor to CLS' policy priorities in a very short period of time. In addition to his regular caseload, Mohammed took the initiative to quickly learn and contribute to Philadelphia's new Eviction Diversion Program, considered a national model and highlighted in a letter from the Department of Justice to the fifty state supreme court justices. Mohammed conducted legal research and wrote claim and demand letter templates so that CLS attorneys and unrepresented tenants could better enforce new eviction prevention laws as part of the Eviction Diversion Program.



While Mohammed has a diverse legal and non-legal work background, the through line is a commitment to working towards the public interest and a persistence in developing and applying his considerable skills to that effort. I saw the value of Mohammed's skills, initiative, and experience working with him last summer and it is why I believe he would be a great addition to your chambers. Please call me at (215) 981-3778 or email me at rgarland@clsphila.org if I can be of any further assistance.

Sincerely,

Rachel Garland
Managing Attorney, Housing Unit

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 10, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write this letter of recommendation on behalf of Mohammed Al-Shawaf, who was a student in my State and Local Government Law class in the fall semester of 2022. Mohammed ("Mo") was a star in a class that included several very strong students, the kind of students who make it worth teaching in the first place. Mo stood out for several reasons, and I want you to tell you about them.

First, Mo was exceptionally mature, bringing with him from his impressive years of work experience a wide range of content area knowledge and academic acumen. This was in addition to his level of preparation, which was flawless, his thoughtful and synthetic oral interventions in the classroom, and some of the best-written papers I have read in a dozen years of teaching. Not only was his research thorough, but he brought in both legal and policy materials, and wove them together seamlessly. For his midterm paper, he wrote about a local energy model in California, its statutory background, and the underlying legal and policy choices that shaped its development and ongoing implementation. After the papers were de-anonymized, I saw that I had written on his—"a pleasure to read"—and it was. I started my legal teaching many years ago as an instructor of legal writing, and my standards for writing are high. There was not a single thing I would have changed in that essay; and in fact, I am encouraging Mo to submit it for publication.

Mo also has unique personal qualities which would make him an excellent law clerk. First, he has exceptional emotional intelligence. As you may know, the transition back to a post-pandemic "normal" classroom has been something of a challenge. In Mo, I had an ally. He is a connector, and a natural leader. He suggested a classroom seating layout that allowed for better inclusion and communication, and improved the classroom experience for everyone that way. He had a way of checking in on his peers. He listened in the classroom both to the professor and to the other students, asked questions that furthered the conversation, and he was not afraid to ask for guidance when he thought he needed it (and sometimes, I think, when he believed others might need it)

I have had several conversations with Mo outside of class, and he is thoughtful, committed to social justice, and a general delight. His resume, which I know you have seen, shows an ascending degree of responsibility in policy jobs, including some impressive leadership positions, and most recently a coveted position in the White House Counsel's office. I have no doubt that Mo will ascend to a leadership role in public law, and we'll be lucky to have a public servant like him. A clerkship would be a valuable part of his education, because of the rigor of the judicial writing and research process, and the mentorship he will receive. I believe that if you hire Mo, he will become a valuable mentee, thought partner, and member of the family of clerks. He has my highest recommendation, and I would be glad to answer any questions.

Very respectfully,

Meryl Justin Chertoff
Adjunct Professor of Law and
Executive Director
Georgetown Project on State and Local Government Policy and Law

Meryl Chertoff - mjc87@georgetown.edu - 9083707082

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 10, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am delighted to write in support of Mohammed Al-Shawaf's application for a clerkship in your chambers. Mr. Al-Shawaf is a talented, hard-working law student firmly committed to a career in public service. He will make an excellent law clerk and an even better attorney.

I came to know Mr. Al-Shawaf when he was enrolled in my class that combines Torts with Contracts. This course is part of Georgetown's alternative curriculum, which typically attracts the most intellectually adventurous students. Mr. Al-Shawaf was very much that sort of student: eager to explore the law from a variety of perspectives, wanting to know not just where it is today but where it came from and where it might be going. He was consistently impressive in all aspects of my course: in class, with his questions during office hours, and on the midterm and the final. He is very smart, has a nuanced vision of the law, writes with subtlety and finesse, and recognizes hidden tensions doctrinal rules and their policy justifications. He is well-equipped produce work that is both of the highest standards technically and that provides thoughtful perspectives on the cases before you beyond merely recounting those advanced by counsel.

Mr. Al-Shawaf is quite remarkable for the depth and breadth of his interests in the law. At my invitation, we met several times to discuss legal issues far-removed from the topics within my course, both during his time in my class and from time to time since. On any topic, he has numerous questions, which are uniformly terrific. He is a true intellectual, but unlike many students of his intellect and range of interests, he also is deeply interested in how things work in the real world. As a law clerk, I would expect him to give you comprehensive research, concise and accurate analyses of the issues in a case before you, but also the benefit of his considerable common sense and insight into what is actually happening between the parties.

I have no doubt that Mr. Al-Shawaf will be an excellent team player and favorite of the other members of your staff. He is flawlessly polite and exceedingly considerate – going to great lengths to minimize his burden on my time – but he also has a pleasant but respectful informality about him. And although he remains fully focused when work is in order, at down times he has a delightful understated sense of humor.

In sum, I can confidently and enthusiastically recommend Mohammed Al-Shawaf for a clerkship in your chambers. He is precisely the kind of student whose accomplishments will bring pleasure and pride to all those that mentored him for many years to come. I would be happy to provide any additional information that you might require to evaluate his application.

Sincerely yours,

David A. Super
Carmack Waterhouse Professor of Law and Economics

David Super - das62@georgetown.edu - 202 525 9132

Mohammed Al-Shawaf

6630 Blair Rd NW, Washington, D.C. 20012 | ma2112@georgetown.edu | 831-402-2229

WRITING SAMPLE

The attached writing sample is an excerpt from a brief I submitted in my Legal Research and Writing course. The fictitious case, *United States v. Bell*, involved an order from the United States District Court for the District of Maryland to suppress evidence because the government's stop of Mr. Bell violated his Fourth Amendment rights. I represented the petitioner, the United States, appealing the district court's order to the United States Court of Appeals for the Fourth Circuit.

The following sections of the brief are omitted for space: Cover page, Table of Authorities, and Argument Section II A (2) and B (1). The Statement of the Case follows course instructions for citations to the record (Joint Appendix or JA). This sample has not been edited by others and is entirely my own work.

STATEMENT OF THE ISSUE

Whether the district court erred when it did not find that a trained narcotics agent had reasonable suspicion to stop a suspected drug smuggler after the agent verified significant details of an anonymous tip and observed the defendant's evasive behavior.

STATEMENT OF THE CASE

Special Agent William Moreland is a federal narcotics agent with DEA. *JA* 3. At the time of the events in question, Agent Moreland had over sixteen months of specialized narcotics experience, including the prior six months where he investigated drug trafficking cases at BWI Airport as a member of a joint federal and state task force. *JA* 12. Agent Moreland is no stranger to law enforcement nor its commitment to upholding public safety, having served as a Baltimore police officer for four years prior to joining DEA. *JA* 3.

On September 15, 2019, Agent Moreland was on duty when he received an anonymous tip describing a man arriving to BWI on a morning flight from Dallas smuggling cocaine in a backpack. *JA* 3, 22. The tipster described knowing the suspect socially and attending a party with him the previous night. At the party, the suspect had shared his plan with multiple people to smuggle cocaine on the flight to BWI the next day, describing his method of packing drugs in his backpack to avoid detection as well as his clientele in Baltimore. *JA* 22. The tip further described the suspect as a black male that resembled the Mayor of Dallas and went by the nickname "Stringer." *Id.* The tip also mentioned the suspect could be identified by the ubiquity of the Dallas Cowboys gear he wore, describing the likely attire as a shirt and a cap. *Id.*

Per his training as a narcotics investigator, Agent Moreland attempted to corroborate the tip's information. *JA* 5. He observed a morning flight from Dallas that arrived at BWI around 1:00 pm, matching the time frame given by the tipster. *Id.* Agent Moreland identified only one individual, the defendant Mr. Bell, that matched the tip's description. The defendant was a black male whose facial

features and age bore some resemblance to the tipster's Mayor of Dallas description. *JA 13*. The defendant also wore a Cowboys shirt and carried a backpack with a Cowboys logo. *JA 6*.

Agent Moreland attempted to further corroborate the tip while the defendant was in line at an airport convenience store. *JA 7*. During a brief conversation Agent Moreland struck up about the Cowboys, the defendant claimed he was in Baltimore to visit his grandmother and did not know when he was returning to Dallas. *Id.* Agent Moreland subsequently confirmed he was known primarily by a nickname. *JA 8*. When he attempted to verify the nickname, the defendant's appearance visibly changed, and he aggressively asked Agent Moreland to identify himself. *Id.* When Agent Moreland disclosed he was a DEA agent, the defendant abruptly stopped talking, exited the line after paying for his purchase, and hurriedly left the area. *Id.*

Agent Moreland followed the defendant as he moved towards baggage claim, observing him "walking quickly" and "weaving around people" as if he was in "a big hurry." *Id.* Agent Moreland saw the defendant look over his shoulder at least two times to see if he was being followed, nearly running into a woman with a stroller in his haste. *JA 9*. Agent Moreland additionally noticed he did not pick up any checked luggage. *Id.*

When the defendant looked over his shoulder a third time in the taxi line, he recognized Agent Moreland. *JA 10*. The defendant seemed "nervous and agitated," was "not making eye contact," and sweat profusely as Agent Moreland approached. *Id.* The defendant moved to get into a taxi, and Agent Moreland stopped him and asked for his full name and identification. *Id.* When Agent Moreland noticed multiple fraudulent driver's licenses containing the defendant's picture in his wallet, he arrested Mr. Bell for federal identity fraud. *Id.*

On February 10, 2021, the United States District Court for the District of Maryland granted the defendant's motion to suppress the discovery of the fraudulent driver's licenses on Fourth Amendment grounds but stayed its order pending appeal. *JA 24-25*.

SUMMARY OF THE ARGUMENT

This case concerns whether trained law enforcement officers can exercise their duty to stop the illegal trafficking of dangerous drugs by using reliable citizen tips and their own assessments of drug smuggling behavior developed from extensive field experience.

The anonymous citizen tip exhibited multiple characteristics of reliability and supplied a basis for Agent Moreland's reasonable suspicion to stop Mr. Bell. The tip contained significant, predictive detail about the defendant's travel itinerary, which Agent Moreland corroborated, along with key aspects of the defendant's identity and appearance. The tipster described how they knew the defendant and detailed his plan to smuggle cocaine through BWI Airport, establishing a strong basis of knowledge for the tip's allegation of drug trafficking.

Independent of the anonymous tip, Agent Moreland's assessment of the defendant's suspicious acts and behavior supported a stop. Agent Moreland's specialized narcotics training and substantial law enforcement experience informed his observations of the defendant's activities. The defendant abruptly and quickly left the area after learning of Agent Moreland's identity and wildly weaved through crowds while repeatedly looking back to see if he was followed. The defendant did not pick up any luggage despite claiming the reason for his visit was an open-ended stay to see his grandmother. Finally, the defendant displayed visible signs of nervous behavior while attempting to flee the airport. Although capable of construing innocently on their own, these facts viewed together by a trained agent indicate a reasonable suspicion of illegal activity. When bolstered further by a significantly corroborated tip detailing the illegal activity of the defendant, Agent Moreland was justified in stopping Mr. Bell based on the totality of the circumstances. Accordingly, the United States asks you to reverse the district court's decision to suppress evidence.

ARGUMENT

I. STANDARD OF REVIEW

The standard of review for considering a motion to suppress evidence on appeal is review of a district court's factual findings for clear error and its legal determinations *de novo*. *United States v. Perkins*, 363 F.3d 319, 320 (4th Cir. 2004).

II. AGENT MORELAND HAD REASONABLE SUSPICION OF THE DEFENDANT'S ILLEGAL ACTIVITY TO JUSTIFY AN INVESTIGATORY STOP BASED ON THE TOTALITY OF THE CIRCUMSTANCES

Agent Moreland corroborated significant details of an anonymous tip alleging the defendant was smuggling illegal drugs and observed a series of nervous and evasive behaviors by the defendant that warranted a minimally intrusive stop. Consistent with the Fourth Amendment, an officer may conduct a brief investigatory stop if there is a “reasonable, articulable suspicion that criminal activity is afoot.” *See Illinois v. Wardlow*, 528 U.S. 119, 123 (2000); *Perkins*, 363 F.3d at 321. Reasonable suspicion is not assessed by analyzing individual facts that may have innocent explanations on their own, but on the “totality of the circumstances” observed by a trained officer. *See Illinois v. Gates*, 462 U.S. 213, 231 (1983).

Reasonable suspicion can be based on an anonymous tip that provides sufficient, verifiable information about the suspect and crime to demonstrate its reliability to an officer. *See Alabama v. White*, 496 U.S. 325, 330 (1990). Observations of suspicious behavior made by a trained officer can also independently justify reasonable suspicion. *See United States v. Sokolow*, 490 U.S. 1, 2 (1989). Agent Moreland’s corroboration of material aspects of the anonymous tip and observations of the defendant’s suspicious behavior informed by his specialized narcotics experience amounted to reasonable suspicion and warranted the brief stop.

A. The anonymous tip possessed multiple indicators of reliability to establish a basis for reasonable suspicion.

Agent Moreland justifiably relied on an anonymous tip bearing numerous markers of trustworthiness. Anonymous information is well-established as a grounds for an investigatory stop if it

exhibits “sufficient indicia of reliability.” *See White*, 496 U.S. at 332. Courts have consistently identified certain factors that support the overall reliability of an anonymous tip. *See Gates*, 462 U.S. at 233.

A tip is reliable if it contains predictive information and detail about the individual and alleged criminal activity, which are at least partially corroborated by an officer. *See White*, 496 U.S. at 331. Additionally, an informant’s basis of knowledge lends “significant support to the tip’s reliability.” *See Navarette v. California*, 572 U.S. 393, 399 (2014). Agent Moreland corroborated the tip’s predictions of the defendant’s travel itinerary and key identifying features of his appearance. Combined with the tipster’s detailed basis for this information, the tip is a reliable means to establish reasonable suspicion.

1. Agent Moreland corroborated significant predictive information and key identifying details of the tip.

Agent Moreland verified the tip’s predictions of the defendant’s travel itinerary and specific features of the defendant’s identity and attire, demonstrating the tip’s reliability. The independent corroboration of “significant aspects of an informer’s predictions” that are not easily predicted impart some degree of reliability to a tip’s other allegations. *See White*, 496 U.S. at 331-32. The presence of detail about the individual and alleged criminal activity further increases the tip’s reliability. *See United States v. Elston*, 479 F.3d 314, 318 (4th Cir. 2007).

In *White*, the Supreme Court found officers had reasonable suspicion to stop a suspected cocaine smuggler after corroborating certain predictive and seemingly innocent details. *See White*, 496 U.S. at 331-32. The anonymous tipster told the police that a woman would drive from a particular apartment building to a particular motel within a specified timeframe and described certain identifying features of the vehicle. *See id.* The tipster also asserted that the woman would be transporting cocaine in a brown bag. *See id.* Within the timeframe identified, the officers corroborated the description of the vehicle, the location, and the presumed route to the motel before stopping the suspect. *See id.* Although the officers did not identify the bag allegedly containing cocaine, the Court found that the predictive facts the officers did corroborate—the defendant’s travel itinerary and key identifying features—allowed a reasonable

inference that the tipster knew about the suspect's illegal activity because "only a small number of people ... are privy to an individual's itinerary." *See id.* at 332.

Like the tip in *White* that accurately predicted the defendant's location, route and time frame of travel, the tip here accurately predicted the defendant would be arriving at BWI Airport on a morning flight from Dallas. *See id.* at 331-32. The tip also gave identifying details that Agent Moreland corroborated, including the defendant's physical appearance and likeness, the Cowboys gear he could be identified with, and that he was known primarily by a nickname.

Agent Moreland additionally verified the presence of the defendant's backpack allegedly transporting cocaine before making a stop, an analogous fact that even officers in *White* did not corroborate before their stop. *See id.* Although Agent Moreland acknowledged the shortcomings of the Mayor of Dallas comparison and could not confirm the defendant's specific nickname, the Court's precedents demonstrate reasonable suspicion does not require 100 percent verification of the tip. *See id.* Rather, reasonable suspicion is met when an officer corroborates significant aspects of a tip's predictions and key identifying details that, when viewed together, give credence to the tip's allegations of illegality. *See id.* Agent Moreland's corroboration of predictive travel itinerary information and details of the defendant's appearance and attire made the tip's allegation of illegality reliable.

2. The tipster shared a detailed basis of knowledge for their information.

[Omitted for space]

B. Agent Moreland's trained assessment of the defendant's suspicious activities and behavior warranted the stop.

Agent Moreland's experience and training informed his observations of the defendant's suspicious actions at the airport. Law enforcement officers are trained to make inferences from observable facts that, while appearing meaningless to untrained eyes, can warrant reasonable suspicion. *See United States v. Cortez*, 449 U.S. 411, 419 (1981); *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000). Agent Moreland's narcotics experience clued him into recognizing the defendant's evasive acts in the airport and nervous behavior at the taxi stand as indicators of reasonable suspicion.

1. Agent Moreland’s narcotics training and experience require deference.

[Omitted for space]

2. Agent Moreland’s observations of the defendant’s nervous and evasive behavior indicated reasonable suspicion.

Agent Moreland’s trained observations of the defendant’s behavior at the airport, including his nervous and evasive acts, was sufficient to establish reasonable suspicion of the defendant’s illegal activity. Courts have recognized common indicators of drug trafficking that, when observed by an experienced agent, provide evidence of reasonable suspicion. *See United States v. Sokolow*, 490 U.S. 1, 10 (1989). The factors include a suspect who does not check luggage at an airport, indicating their intention to return shortly after trafficking drugs to a new location; walks quickly or hurriedly—especially in the presence of law enforcement; and appears nervous or excessively sweats in front of an officer. *See, e.g., Florida v. Rodriguez*, 469 U.S. 1, 3 (1984); *United States v. Harrison*, 667 F.2d 1158, 1161 (4th Cir. 1982); *United States v. Mason*, 628 F.3d 123, 129-30 (4th Cir. 2010).

In *Harrison*, the Fourth Circuit found DEA agents had reasonable suspicion to stop a drug smuggling suspect after solely observing the defendant’s behavior at an airport. *See Harrison*, 667 F.2d at 1161. The suspect had no checked luggage, and upon noticing an agent observing him, made a “peculiar head motion” and started walking “very quickly” through the airport. *See id.* at 1159. The suspect further appeared “nervous and fidgety” when approached by the agent in the taxi line. *See id.* at 1160. The court acknowledged that while any of the facts alone would not amount to reasonable suspicion, these indicators observed collectively by a trained agent justified the stop. *See id.* at 1161.

Like the suspect in *Harrison*, the defendant in this case exhibited multiple suspicious behaviors once he became aware that a federal agent was observing him. *See id.* The defendant abruptly stopped speaking to Agent Moreland, walked hurriedly, and weaved through crowds as he motioned his head back and forth to see if he was being followed. The defendant had no checked luggage, despite his claim of an open-ended stay in Baltimore. Finally, as Agent Moreland approached him in the taxi stand, he avoided eye contact, appeared “nervous and agitated” and sweat profusely. Although the defendant’s individual

behaviors could be construed innocently in isolation, they amount to reasonable suspicion of illegal activity when viewed in their totality.

C. Agent Moreland had reasonable suspicion to justify a stop based on the totality of circumstances.

Agent Moreland's corroboration of significant aspects of an anonymous tip alleging illegal drug smuggling and his own observations of the defendant's suspicious behavior amounted to reasonable suspicion. "The totality of the circumstances must be evaluated to determine the probability, rather than the certainty, of criminal conduct." *United States v. Sokolow*, 490 U.S. 1, 2 (1989). The Court's precedents demonstrate that officers can stop individuals "to resolve ambiguities in their conduct" and even "accepts the risk that officers may stop innocent people." *See Illinois v. Wardlow*, 528 U.S. 119, 120 (2000). Although individual acts in isolation may appear "quite consistent with innocent travel," they can "amount to reasonable suspicion that criminal activity was afoot" when viewed together by a trained agent. *See Sokolow*, 490 U.S. at 2.

The tip's accurate predictions of the defendant's travel itinerary, the corroboration of substantial aspects of the defendant's identity and appearance, and the tipster's basis of knowledge may have warranted reasonable suspicion on its own. Agent Moreland, however, continued to investigate for further indicators of suspicious behavior. Agent Moreland observed the defendant's evasive movements upon learning of the presence of law enforcement, noticed he did not pick up any luggage, and recognized the defendant's "nervous and agitated" demeanor and profuse sweating as he approached. Only then did Agent Moreland stop the defendant for his identification. Based on the totality of circumstances, Agent Moreland had reasonable suspicion of the defendant's illegal activity to justify an investigative stop.

CONCLUSION

For the foregoing reasons, the district court's decision to suppress evidence should be reversed.

Mohammed Al-Shawaf, Counsel for Appellant

Applicant Details

First Name **Josh**
 Last Name **Almond**
 Citizenship Status **U. S. Citizen**
 Email Address jalmond@unc.edu
 Address

Address
Street
203 Conner Dr., Apt 5
City
Chapel Hill
State/Territory
North Carolina
Zip
207514
Country
United States

Contact Phone Number **2405435712**

Applicant Education

BA/BS From **James Madison University**
 Date of BA/BS **May 2021**
 JD/LLB From **University of North Carolina School of Law**
<https://law.unc.edu/>
 Date of JD/LLB **May 11, 2024**
 Class Rank **15%**
 Law Review/Journal **Yes**
 Journal(s) **North Carolina Banking Institute Journal**
 Moot Court Experience **No**

Bar Admission**Prior Judicial Experience**

Judicial Internships/
 Externships **No**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Broome, Lissa
lbroome@email.unc.edu
919.962.7066

Gerhardt, Deborah
dgerhardt@unc.edu
(919) 962-7219

Brinkley, Martin
martin92@unc.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

JOSHUA ALMOND

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Current Address: 203 Conner Dr. Apt 5, Chapel Hill, NC 27514

Permanent Address: 305 Bridle Crest Sq. NE, Leesburg, VA 20176

June 12, 2022

The Honorable Juan R. Sánchez
United States District Court for the Eastern District of Pennsylvania
14613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Dear Judge Sánchez:

I am a rising third-year law student at the University of North Carolina School of Law seeking a clerkship position for the 2024-2025 term. My experience as a Summer Associate with Potter Anderson & Corroon in Wilmington, Delaware has made me fall in love with the greater Philadelphia area, explaining why I am seeking a clerkship so far from North Carolina. Further, my experience as the Editor-in-Chief of the North Carolina Banking Institute Journal demonstrates my ability to succeed in a clerkship position.

As the Editor-in-Chief of the North Carolina Banking Institute Journal, I have coordinated an entire year of programming to successfully publish our upcoming volume. This includes soliciting and editing professional articles, grading applications for staff membership, and organizing our yearly “Banking Institute,” a CLE program held in Charlotte, North Carolina for several hundred attorneys. This experience demonstrates my time management and leadership skills, in addition to my sharp legal writing and research skills, preparing me well for a clerkship position.

Additionally, my experience as the president of the Transactional and Corporate Law Association demonstrates my ability to plan complex student enrichment events while still diligently focusing on my coursework. Managing these student events, keeping up with law journal assignments, and ensuring success in my coursework shows my ability to organize numerous projects simultaneously while still doing my best work.

Further, the training I have received from the attorneys at Potter Anderson & Corroon has been immensely helpful thus far this summer. I have reviewed numerous Court of Chancery complaints and briefs, learning from experienced litigators about how to be a successful writer within a prestigious jurisdiction. These same skills would readily apply to this clerkship position.

Further materials are attached to this application, and if any other documents are requested, I can have them supplied as soon as possible. I welcome the opportunity to speak with you about a clerkship position and can be reached at 240-543-5712 or jalmond@unc.edu. Thank you for your time and consideration.

Sincerely,
/s/ Joshua Almond

JOSHUA ALMOND

jalmond@unc.edu • (240) 543-5712

Current Address: 203 Conner Dr. Apt 5, Chapel Hill, NC 27514

Permanent Address: 305 Bridle Crest Sq. NE, Leesburg, VA 20176

EDUCATION

University of North Carolina School of Law | Chapel Hill, North Carolina

Juris Doctor, expected May 2024

GPA: 3.755 (Top 15%)

- *North Carolina Banking Institute Journal*, Editor-in-Chief, Vol. 28, Published Note in Vol. 27
- Certificate of Merit Recipient, Earned the Highest Grade in both Copyright and Corporations Courses
- Eugene Gressman & Daniel H. Pollitt Oral Advocacy Award Recipient
- Marion A. Cowell, Jr. Scholarship Recipient
- Transactional and Corporate Law Association, President
- Honors Writing Scholar, assists in the instruction of first-year writing and research coursework

James Madison University | Harrisonburg, Virginia

Bachelor of Music, Music Industry, *summa cum laude*, May 2021

GPA: 3.912

- Elected by University Faculty as the 2021 School of Music Outstanding Graduate
- Teaching Assistant for the “Legal Aspects of the Music Industry” Class
- Phi Kappa Phi Honor Society
- Selected for the Truist Emerging Leader Certification

EXPERIENCE

Potter Anderson & Corroon LLP | Wilmington, Delaware

Summer Associate, Summer 2023

The Regulatory Fundamentals Group LLC | New York, New York (Remote)

Legal Intern, Summer 2022

- Directly assisted the company CEO by researching and analyzing financial regulations and the rapidly changing investment landscape through legal memoranda, frequently collaborating with industry professionals from universities and law firms to assist in research
- Maintained a database of financial regulations used to consult clients on their specific regulatory needs
- Prepared a private equity fund financing white paper used to educate clients on fund loan implications

Dean Martin Brinkley, University of North Carolina School of Law | Chapel Hill, North Carolina

Legal Research Assistant, Summer 2022

- Conducted and synthesized legal and historical research regarding the financial history of the University of North Carolina and drafted legal memoranda for the Dean of UNC Law School
- Completed administrative tasks involving the Dean’s preparation for his Legal History course

Brevard Music Center | Brevard, North Carolina

Business Administrative Associate, Summer 2021

- Assisted the Chief Financial Officer, Operations Manager, and Accounting Manager in administrative duties, employee onboarding of over 150 individuals, and daily accounting journal entries respectively
- Managed point-of-sale software and structured company sales processes for over 50 summer events
- Established and managed dozens of business relationships with product distributors and service providers

Loudoun County Public Schools, Freedom High School | South Riding, Virginia

Music Instructor, June 2017 - Present

- Designs the school’s marching band program and helps instruct the marching and concert ensembles

INTERESTS

Classical Music; Classically Trained French Horn Player; and 2016 Drum Corps International World Champion



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SCHOOL OF LAW

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Unofficial Transcript

Note to Employers from the Career Development Office: Grades at the UNC School of Law are awarded in the form of letters (A, A-, B+, B-, C, etc.). Each letter grade is associated with a number (A = 4.0, A- = 3.7, B+ = 3.3, B = 3.0, etc.) for purposes of calculating a cumulative GPA. An A+ may be awarded in exceptional situations. For more information on the grading system, including the current class rank cutoffs, please contact the Career Development Office at (919) 962-8102 or visit our website at <https://law.unc.edu/careers/for-employers/grading-policy-faq/>

Student Name: Joshua Almond

Cumulative GPA: 3.755

| <u>Class</u> | <u>Description</u> | <u>Units</u> | <u>Grading</u> | <u>Grade</u> | <u>Grade Points</u> |
|-------------------------|-----------------------|--------------|----------------|--------------|---------------------|
| LAW 201 | CIVIL PROCEDURE | 4.00 | Law - graded | A- | 14.800 |
| LAW 205 | CRIMINAL LAW | 4.00 | Law - graded | A | 16.000 |
| LAW 209 | TORTS | 4.00 | Law - graded | A- | 14.800 |
| LAW 295 | RES,REAS,WRIT,ADVOC I | 3.00 | Law - graded | B+ | 9.900 |

| <u>Class</u> | <u>Description</u> | <u>Units</u> | <u>Grading</u> | <u>Grade</u> | <u>Grade Points</u> |
|--------------------------|------------------------|--------------|----------------|--------------|---------------------|
| LAW 204 | CONTRACTS | 4.00 | Law - graded | A- | 14.800 |
| LAW 207 | PROPERTY | 4.00 | Law - graded | B+ | 13.200 |
| LAW 234A | CONSTITUTIONAL LAW | 4.00 | Law - graded | A | 16.000 |
| LAW 296 | RES,REAS,WRIT,ADVOC II | 3.00 | Law - graded | A- | 11.10 |

| <u>Class</u> | <u>Description</u> | <u>Units</u> | <u>Grading</u> | <u>Grade</u> | <u>Grade Points</u> |
|-------------------------|--------------------|--------------|----------------|--------------|---------------------|
| LAW 210 | COPYRIGHT LAW | 3.00 | Law - graded | A+ | 12.900 |
| LAW 211 | TRADEMARK LAW | 3.00 | Law - graded | A- | 11.100 |
| LAW 242 | EVIDENCE | 4.00 | Law - graded | A | 16.000 |
| LAW 280 | INCOME TAXATION | 4.00 | Law - graded | A- | 14.80 |

| <u>Class</u> | <u>Description</u> | <u>Units</u> | <u>Grading</u> | <u>Grade</u> | <u>Grade Points</u> |
|--------------------------|-------------------------------|--------------|----------------|--------------|---------------------|
| LAW 228 | BUSI ASSOCIATIONS | 4.00 | Law - graded | A+ | 17.200 |
| LAW 250 | INSURANCE & DISASTER LAW | 3.00 | Law - graded | B+ | 9.900 |
| LAW 266P | THE LAW FIRM | 3.00 | Law - graded | B+ | 9.900 |
| LAW 542 | LEGAL CRISIS MANAGEMENT | 2.00 | Law - graded | A- | 7.400 |
| LAW 551 | LEGAL RESPONSE FINANC. CRISES | 2.00 | Law - graded | A | 8.000 |

| | |
|--------------------------|---------|
| Total Grade Points | 217.800 |
| / Units Taken Toward GPA | 58.000 |
| = GPA | 3.755 |

June 11, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

It is my pleasure to write on behalf of Joshua Almond, whom I understand has applied for a clerkship with you following his graduation from UNC School of Law in May 2024. I know Josh as a staff member of the *North Carolina Banking Institute* journal, for which I am the faculty advisor, and as the Editor-in-Chief for the coming year. Josh also recently received the Marion A. Cowell, Jr. Scholarship, awarded to the rising 3L on the journal who has provided the greatest dedication to the journal. Although all ten of our rising editors receive scholarships in the amount of \$10,000, this scholarship is one of the first two selected out of the ten (the second scholarship has a need component) and is an honor to receive.

As Josh's academic record demonstrates, he is an excellent student. He graduated summa cum laude from his undergraduate institution and has earned very high grades in law school. In fact, his current 3.75 GPA is very close to the GPA mark for the top 10% of his class at the end of the Spring 2023 semester, which was 3.776.

Maybe even more important for a judicial clerk is the ability to research, write, and make sense of complex topics. Josh developed his own topic for his journal note, which was recently published, on fraud in fund finance subscription facilities. With very little guidance from me, he was able to explain a sophisticated financing arrangement quite clearly and offer some nuanced suggestions for increased due diligence to avoid fraud in the future. I was very impressed.

To round it all out, Josh served this year as President of the law school's Transaction and Corporate Law Association, a large group of students. Josh has been helpful and professional when I have asked him for help in promoting our Center's events to TCLA.

Josh would be a wonderful addition to any office environment. He is pleasant, hard-working, respectful, and a great contributor to anything he undertakes. Josh has my highest recommendation and would make an excellent law clerk. Please contact me if I may provide any additional information (lbroome@email.unc.edu or 919-962-7066).

Best,

Lissa L. Broome

Burton Craige Distinguished Professor
Director, Center for Banking and Finance

Lissa Broome - lbroome@email.unc.edu - 919.962.7066

June 11, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am writing to share my strongest recommendation of UNC law student, Joshua Almond, for a clerkship with your Court. Josh is an exceptional student. He stood out from his excellent peers by demonstrating a passionate interest in learning every day. Last fall, Josh took both my Trademark and Copyright Law classes. He earned the very highest grade in Copyright Law and his exam was among the top five in trademark law. Perhaps more importantly, every day, Josh came to class organized, prepared, and engaged. I cannot think of a single instance when he disappointed me. I call on students frequently, and Joshua was always prepared and answered thoughtfully. His participation meaningfully contributed to what all the students in those classes learned.

Josh stood out for another reason. He was generous with his time and incredibly helpful to his peers, taking time to assist other students who found the material more challenging.

Josh's background in classical music helped him develop an exceptional work ethic and attention to detail. Another great benefit Josh acquired from this discipline is the ability to accept constructive advice and adapt his approach to find a better solution. I assigned a group take home project that very few, if any, students tackle well on the first effort. Joshua's first draft was good, but the way his team took my comments and integrated them to advance the final project showed his willingness to think through constructive advice and integrate it into his work product.

As a former law clerk, I know how important it is for you to find a trustworthy and dedicated candidate to support your work. If I were a judge looking for a law clerk, Josh would be among the first young lawyers I would call. In addition to his many academic strengths and work ethic, Josh has an easy-going personality and a wonderful sense of humor. If you are looking for a clerk who will do meticulous work, is eager to serve and passionate about learning, I am confident you will be grateful to have chosen Josh.

Please feel free to contact me at (919) 357-4316 or dgerhardt@unc.edu if I can provide you with any additional information about this most worthy candidate.

Sincerely yours,

Deborah R. Gerhardt
Professor of Law

Deborah Gerhardt - dgerhardt@unc.edu - (919) 962-7219

February 7, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

With great pleasure and enthusiasm, I recommend my student Joshua Almond for a clerkship in your chambers.

Since he arrived at the Law School, I have come to know Josh both as an outstanding law student and as a wonderful human being. He served as one of my research assistants last summer, assisting me with a long term research project having to do with the financing of the University of North Carolina prior to the Civil War. He was an excellent colleague on an abstruse subject, a good and clear writer, and a thoughtful and creative critic of our work.

I presently have the honor of teaching Josh along with approximately 80 students in a four-hour course in Business Associations, which is taken by nearly every UNC Law School student. Josh is a joy to have in class. He brings a keen interest in corporate law, as his law review note for the *North Carolina Journal of Banking Law* reflects.

Finally, Josh and I have collaborated as musicians in a chamber ensemble, he on French horn and I on oboe. He is a terrific player and a sensitive musician. We have worked together on a trio by the 19th century German composer Carl Reinecke with a pianist friend of mine. We hope to perform this piece sometime in the course of the spring. The preparation of a work of chamber music is similar in many ways to the relationship between law clerks in a judge's chambers and with the judge himself or herself. As a former law clerk to Chief Judge Sam J. Ervin, III of the Fourth Circuit, who valued collegiality and camaraderie in his law clerks exceedingly, I can attest that Josh will fit in with others in your chambers and will serve you splendidly in the substantive part of your work.

Please let me know if I can answer any further questions about Josh. It would be my pleasure to speak to you by phone if it would be helpful to you.

Sincerely,

Martin H. Brinkley

Dean
William Rand Kenan, Jr. Distinguished Professor

Martin Brinkley - martin92@unc.edu

JOSHUA ALMOND

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Writing Sample Cover Sheet

This writing sample is excerpted from my final written assignment for the course “Legal Response to Financial Crisis.” The paper was reviewed once by the course professor and once by another student. The rest of the editing was conducted independently outside of those two initial reviews.

This excerpt includes the background facts and primary argument of the paper. Omitted is the section applying my argument to a real-life scenario and rebutting possible challenges to the argument. Upon request, the full paper can be provided.

FinTech Fiasco: An Approach to FDIC Misrepresentation Prevention Through the Lens of the Lanham Act

I. INTRODUCTION

In the financial industry, confidence is the key ingredient to a healthy banking system, and subsequently a healthy economy.¹ For example, banks will borrow from clients through demand deposits, meaning that the depositors can withdraw their cash whenever they choose.² The bank will then lend out those deposits for a longer term to make a profit from the interest on the loan.³ This process of “borrowing short” and “lending long” allows for the efficient use of money in our economy because deposits that would ordinarily sit and do nothing can contribute to societal development.⁴ None of this would be possible if customers were not confident in their bank to safely hold their money and give them access to their cash when necessary.⁵

Enter the Federal Deposit Insurance Corporation (“FDIC”). To help maintain public confidence in the banking system, customer deposits of up to \$250,000 in FDIC-member banks are insured by the FDIC, protecting their deposits in the case of the bank’s failure.⁶ This insurance allows depositors to feel comfortable lending their money to an FDIC-member institution, and so far, no covered depositor has ever lost a penny.⁷

¹ See Eamonn K. Moran, *Wall Street Meets Main Street: Understanding the Financial Crisis*, 13 N.C. BANKING INST. 5, 12 (2009) (“Perhaps the most dangerous consequence of this economic crisis is that our collective confidence in our nation’s future, the economy’s resilience, our productivity and entrepreneurial spirit, and our ability to achieve the widely sought after American dream has been badly shaken and tarnished to a significant degree.”).

² See William Bednar & Mahmoud Elamin, *Rising Interest Rate Risk at US Banks*, ECONOMIC COMMENTARY, <https://www.clevelandfed.org/publications/economic-commentary/2014/ec-201412-rising-interest-rate-risk-at-us-banks> (“Banks borrow short and lend long. They often borrow, for example, by taking demand deposits, such as checking and savings deposits, which must be paid back whenever depositors ask for them. On the other hand, most of the money they lend out is tied up in long-term loans, such as mortgages.”).

³ *Id.*

⁴ See *What is the Economic Function of a Bank?*, FED. RESERVE BANK OF S. F. (July 2001), <https://www.frbsf.org/education/publications/doctor-econ/2001/july/bank-economic-function/> (explaining how banks lend to financial institutions, individuals, or governments who need the money for investments or other purposes).

⁵ See John C. Dugan, *Addressing the Fundamental Banking Policy Problem of Runs: Effectively Subordinating Large Amounts of Long-Term Debt to Short-Term Debt to End “Too-Big-to-Fail”*, 22 N.C. BANKING INST. 11, 16 (2018) (explaining how prudential regulation is intended to promote confidence in banks and the banking system).

⁶ *About*, FDIC, <https://www.fdic.gov/about/> (last visited Feb. 26, 2023).

⁷ *Id.*; *Symbol of Confidence*, FDIC (last visited Feb. 26, 2023), <https://www.fdic.gov/consumers/assistance/protection/depaccounts/confidence/symbol.html>.

However, as technology continues to drive significant change in the financial industry, the FDIC-insured status of some financial institutions has become ambiguous.⁸ For example, cryptocurrency exchanges continue to make statements regarding the FDIC-insured status of certain products and accounts.⁹ In reality, these cryptocurrency exchanges are not FDIC-insured institutions, and their accounts and products are not insured.¹⁰

To mitigate this confusion, the FDIC relies on Section 18(a)(4) of the Federal Deposit Insurance Act entitled “False Advertising, Misuse of FDIC Names, and Misrepresentation to Indicate Insured Status.”¹¹ Further, the FDIC released a regulation with additional guidance regarding the misrepresentation of statements involving FDIC-insured partner institutions, motivating financial technology companies (“FinTechs”) to be unquestionably clear about their insured status.¹² Even with this current regulatory scheme, crypto exchanges and other FinTechs are still confusing customers regarding their insured status.¹³

This note analyzes a novel approach to enforcing FDIC-related false advertising and misrepresentation. Because the FDIC monitors the use of its name to reduce consumer confusion and keep uninsured institutions from trading off their goodwill,¹⁴ applying a regulatory scheme that reflects federal trademark law may provide the FDIC with a more expansive enforcement mechanism. This paper addresses registration of the marks “Federal Deposit Insurance Corporation” and “FDIC” as word marks, and the official FDIC sign as a design mark. By treating these as trademarks, the FDIC could bring broad claims against infringers who either confuse consumers or dilute the FDIC’s reputation in the public’s

⁸ See Saule T. Omarova, *Dealing with Disruption: Emerging Approaches to Fintech Regulation*, 61 WASH. U. J.L. & POL’Y 25, 34 (2020) (“By putting increasing pressure on the existing regime of financial regulation and supervision, the rise of fintech exposed the need for revisiting the broader regulatory philosophy underlying and guiding that regime.”).

⁹ See Weiner Brodsky Kider PC, *FDIC Issues Cease and Desist Letters for Deposit Insurance Misrepresentations*, JD SUPRA (Mar. 9, 2023), <https://www.jdsupra.com/legalnews/fdic-issues-cease-and-desist-letters-5434397/> (explaining the most recent release of cease and desist letters sent to cryptocurrency exchanges and other websites making misrepresentations).

¹⁰ *Id.*

¹¹ Federal Deposit Insurance Act § 2[18], 12 U.S.C. § 1828(a)(4).

¹² Advertisement of Membership, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo, 12 C.F.R. § 328.2(a)(3) (2022).

¹³ Weiner Brodsky Kider PC, *supra* note 9.

¹⁴ See *Symbol of Confidence*, *supra* note 7 (emphasizing that all deposits are “backed by the full faith and credit of the United States government”).

eyes.¹⁵ Additionally, enforceability against impermissible use would replace the current knowledge-based scienter requirement with a quasi-strict liability test for infringement.¹⁶

This note proceeds in five parts. Part II analyzes the application and effectiveness of the current regulatory scheme for FDIC false advertising and misrepresentation, particularly involving FinTechs.¹⁷ Part III examines the differences between a potential trademark-based enforcement scheme and the current regulatory scheme.¹⁸ Part IV analyzes the effect of the proposed scheme on FinTechs that the FDIC is currently pursuing.¹⁹ Part V presents the conclusion.²⁰

II. BACKGROUND

Although the FDIC was created by the Banking Act of 1933,²¹ all current legislation governing the operation of the FDIC is housed in the Federal Deposit Insurance Act of 1950.²² Seven factors are listed in Section 6 of the Federal Deposit Insurance Act to determine if a depository institution qualifies for FDIC insurance.²³ This includes (1) the financial history and condition, (2) adequacy of the capital structure, (3) future earnings prospects, (4) general character and fitness of management, (5) risk to the deposit insurance fund, (6) convenience and needs of the community to be served, and (7) consistency of

¹⁵ See Lanham Act § 32(1)(a), 15 U.S.C. § 1114(1)(a) (listing the basis for the trademark infringement claim); *id.* § 1125(c) (listing the basis for the trademark dilution claim).

¹⁶ See Travis R. Wimberly & Giulio E. Yaquinto, *The Infringer's Mental State: Open Questions for Trademark Litigants*, AM. BAR. ASS'N. (Jun. 30, 2021), https://www.americanbar.org/groups/intellectual_property_law/publications/landslide-extra/infringer-mental-state/ ("Liability requires only that the infringer's conduct created a 'likelihood of confusion' among consumers, after all.>").

¹⁷ See *infra* Part II.

¹⁸ See *infra* Part III.

¹⁹ See *infra* Part IV.

²⁰ See *infra* Part V.

²¹ See Banking Act of 1933, ch. 89, 48 Stat. 162 (codified at 12 U.S.C. § 227) (demonstrating how the FDIC was created through this act, but was later reorganized under the Federal Deposit Insurance Act of 1950).

²² See Federal Deposit Insurance Act § 2[1], 12 U.S.C. § 1811 ("There is hereby established a Federal Deposit Insurance Corporation . . . which shall insure, as hereinafter provided, the deposits of all banks and savings associations which are entitled to the benefits of insurance under this chapter, and which shall have the powers hereinafter granted.").

²³ *Id.* § 1816.

corporate powers with the FDI Act.²⁴ The bank will qualify for FDIC insurance if these factors are resolved favorably towards the depository institution.²⁵

If the depository institution qualifies for FDIC member status, it must display the FDIC official sign by twenty-one days after the institution became insured.²⁶ In addition, the short title “Member of FDIC” or “Member FDIC,” or the official sign of the corporation must be included in all advertising “that either promote[s] deposit products and services or promote[s] non-specific banking products and services offered by the institution.”²⁷ Advertising the insured status of the depository institution serves the FDIC’s primary policy goal, instilling confidence in the financial system.²⁸

A. *False Advertising and Misrepresentation*

If a financial institution falsely advertises or misrepresents its insured status, the FDIC may bring an enforcement action against the institution under Section 18(a)(4) of the Federal Deposit Insurance Act.²⁹ Specifically, this section prohibits financial institutions from falsely implying or representing that the FDIC insures them by using the official sign or the term “Federal Deposit,” “Federal Deposit Insurance,” or “Federal Deposit Insurance Corporation” in any part of the business name or advertising.³⁰ Additionally, the institution may not “knowingly” misrepresent that a deposit is insured or the extent or manner to which an obligation is insured.³¹

In addition to this statute, the FDIC issued a regulation that details prohibitive behavior for financial institutions using the FDIC name or logo and making representations about their insurance

²⁴ *Id.*; FED. DEPOSIT INS. CORP., APPLYING FOR DEPOSIT INSURANCE: A HANDBOOK FOR ORGANIZERS OF DE NOVO INSTITUTIONS, DIVISION OF RISK MANAGEMENT SUPERVISION 23 (2017) <https://www.fdic.gov/regulations/applications/handbook.pdf> [hereinafter “FDIC HANDBOOK”].

²⁵ See FDIC HANDBOOK, *supra* note 26, at 23 (detailing exactly how each factor can be resolved in favor of insuring a bank).

²⁶ Advertisement of Membership, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo, 12 C.F.R. § 328.2(a)(3) (2022).

²⁷ *Id.* § 328.2(b)(1), (c)(1).

²⁸ See *About, FDIC*, <https://www.fdic.gov/about/> (last visited Mar. 8, 2023) (“The Federal Deposit Insurance Corporation (FDIC) is an independent agency created by the Congress to maintain stability and public confidence in the nation’s financial system.”).

²⁹ Federal Deposit Insurance Act § 2[18], 12 U.S.C. § 1828(a)(4)(C)–(E).

³⁰ *Id.* § 1828(a)(4)(B).

³¹ *Id.* § 1828(a)(4)(C).

status.³² The regulation extends to any person who (1) “[f]alsely represents, expressly or by implication, that any deposit liability, obligation, certificate, or share is FDIC-insured by using the FDIC’s name or logo;” (2) “[k]nowingly misrepresents, expressly or by implication, that any deposit liability, obligation, certificate, or share is insured by the FDIC if such an item is not so insured;” (3) [k]nowingly misrepresents, expressly or by implication, the extent to which or the manner in which any deposit liability, obligation, certificate, or share is insured by the FDIC, if such an item is not insured to the extent or manner represented;” or (4) “aids and abets” anyone covered in the above three sections.³³ Significantly, the regulation explains that an omission by a financial institution that may lead a reasonable consumer to believe a misrepresentation can also result in liability.³⁴ This includes omitting the identity of any insured depository institution with which the FinTech directly or indirectly has a business relationship or omitting the limit to which deposits are insured.³⁵ The representation made by an institution must also be material, generally meaning that it either states that certain non-insurable products are insured, that the institution is insured when it is not, or that the amount of insurance is different from what is actually provided.³⁶

Notably, the statute and the regulation specifically focus on using the FDIC name and official sign to falsely represent or imply insurance status, and knowingly misrepresenting its insurance status or the extent of its insurance.³⁷ These two prohibitions will be the primary focus of an improved regulatory scheme based on trademark law.

B. Problems Arising from FinTechs

Before its bankruptcy in November of 2022, the cryptocurrency exchange FTX US (“FTX”) was sent a cease-and-desist letter from the FDIC claiming that it had made false and misleading statements in

³² See generally Advertisement of Membership, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo, 12 C.F.R. § 328.100 (2022).

³³ *Id.* § 328.100.

³⁴ *Id.* § 328.102(b)(5)(A)-(D).

³⁵ *Id.*

³⁶ *Id.* § 328.102(b)(4)(i)-(iv).

³⁷ Federal Deposit Insurance Act § 2[18], 12 U.S.C. § 1828(a)(4)(B); 12 C.F.R. § 328.100.

violation of Section 18(a)(4) of the Federal Deposit Insurance Act.³⁸ Specifically, Brett Harrison of FTX represented on Twitter that “direct deposits from employers to FTX are stored in individual FDIC-insured bank accounts in the users’ names and that “stocks are held in FDIC-insured and SIPC-insured brokerage accounts.”³⁹ The FDIC responded to these representations, stating that they “contain false and misleading representations that uninsured products are insured by the FDIC,” in addition to misrepresentations about the extent and manner of the insurance provided.⁴⁰ They also claim that Harrison had falsely implied that FTX was itself FDIC-insured, the brokerage accounts of FTX are insured, and that cryptocurrency can be FDIC insured.⁴¹ Each of these implications were false.⁴² Further, FTX failed to identify the banks that FTX had relationships with, directly or indirectly, for which consumer funds are deposited.⁴³

Consequently, the FDIC demanded corrective action from FTX, including the following.⁴⁴ FTX shall remove all statements that explicitly or implicitly suggest that FTX is FDIC-insured, FTX brokerage accounts are FDIC-insured, any funds held as cryptocurrency are protected by FDIC insurance, and that FDIC insurance provides coverage in any manner and extent “other than those set forth in the Federal Deposit Insurance Act.”⁴⁵ This includes scrubbing these statements from any website, including accounts on Twitter or other social media platforms, and any marketing or consumer-facing materials.⁴⁶ FTX must then submit written confirmation that all statements have been removed within 15 days.⁴⁷

After the FDIC issued the cease-and-desist, Harrison and FTX founder Sam Bankman-Fried responded to the document through Twitter.⁴⁸ Bankman-Fried tweeted that “FTX does not have FDIC

³⁸ Letter from Seth P. Rosebrock, Assistant Gen. Couns., Enf’t, Fed. Deposit Ins. Corp., to Brett Harrison, President, and Dan Friedberg, Chief Regul. Officer, FTX (Aug. 18, 2022) (on file with the FDIC) [hereinafter “FTX Letter”].

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ See Kevin Helms, *FDIC Issues Crypto-Related Cease and Desist Orders to 5 Companies Including FTX US Exchange, BITCOIN.COM* (AUG. 20, 2022), <https://news.bitcoin.com/fdic-issues-crypto-related-cease-and-desist-orders-to-5-companies-including-ftx-us-exchange/> (“Bankman-Fried apologized for the confusion regarding FDIC insurance on Twitter. ‘Clear communication is really important; sorry!’ he tweeted. ‘FTX does not have FDIC insurance (and we’ve never said so on website etc.); banks we work with do.’”).

insurance (and we've never said so on website etc.); *banks we work with do*.⁴⁹ In a way, Bankman-Fried responded to the cease-and-desist letter about misrepresenting statements with a statement that may still confuse depositors regarding the insured status of their accounts.⁵⁰

Numerous other FinTechs have recently been the subject of FDIC false advertising and misrepresentation claims.⁵¹ Gemini, a cryptocurrency exchange, misrepresented insurance status to customers who operate a Gemini "Earn" account, stating that funds would be protected in the case of a Gemini collapse.⁵² Additionally, CEX.IO, another cryptocurrency exchange, was sent a cease and desist from the FDIC because of misrepresentations about the insured status of its fiat currency accounts.⁵³ This demonstrates the FDIC's commitment to protecting depositors, maintaining its well-respected name, and preventing an increasing number of infringers from misleading consumers.⁵⁴

III. TRADEMARK-BASED ENFORCEMENT SCHEME

A. Trademark Law Background

In 1946, the Lanham Act was enacted to provide a statutory process of federally protecting a person's or other entities' trademarks.⁵⁵ Generally, a trademark is "any word, name, symbol, or device, or any combination thereof" used to identify and distinguish the goods of one person from those

⁴⁹ *Id.*

⁵⁰ See *id.* (suggesting that FTX's statements may be confusing to customers, and explaining how FTX apologized for causing any confusion through its advertising).

⁵¹ Press Release, Fed. Deposit Ins. Corp., FDIC Issues Cease and Desist Letters to Five Companies For Making Crypto-Related False or Misleading Representations about Deposit Insurance (Aug. 19, 2022).

⁵² Steve Kaaru, *Gemini Lied About FDIC Insurance in Emails to Earn Customers: Report*, COINGEEK (Feb. 3, 2023), <https://coingeek.com/gemini-lied-about-fdic-insurance-in-emails-to-earn-customers-report/>.

⁵³ Nelson Wang, *FDIC Tells Crypto Exchange CEX.IO to Stop Claiming US Dollars Held in Its Wallets Are Insured*, COINDESK (Feb. 15, 2023), <https://www.coindesk.com/policy/2023/02/15/fdic-tells-crypto-exchange-cexio-to-stop-claiming-us-dollars-held-in-its-wallets-are-insured/>.

⁵⁴ See Susan Seaman & Daniel Wilkinson, *Why Fintechs and Crypto Companies Should Pay Attention to the FDIC's Latest Round of Cease-and-Desist Letters*, HUSCH BLACKWELL (Feb. 22, 2023), <https://www.huschblackwell.com/newsandinsights/why-fintechs-and-crypto-companies-should-pay-attention-to-the-fdics-latest-round-of-cease-and-desist-letters> ("The FDIC's latest round of cease-and-desist letters follows another batch sent in August 2022 to five crypto-related companies including the now infamous FTX. At the time of the initial cease-and-desist letters, the FDIC had warned of an increase in deposit insurance misrepresentations that jeopardized the integrity of the FDIC insurance system and create consumer harm.").

⁵⁵ See *Lanham Act: Everything You Need to Know*, UPCOUNSEL TECH., <https://www.upcounsel.com/lanham-act> (last visited Mar. 25, 2023) ("The Lanham Act created a national trademark registration system. Enacted in 1946, this act also protects a trademark owner against others using similar marks.").

manufactured by others.⁵⁶ Notably, trademarks protect a company's brand, provide consumers with a method of identifying a product, and protect against counterfeiting and fraud.⁵⁷ Like the FDIC, an important policy rationale supporting trademark protection is giving customers confidence in the products they consume and keeping other companies from trading off the goodwill that an entity has garnered through its business.⁵⁸

To protect a trademark, the mark must be “used in commerce” and “sufficiently distinctive.”⁵⁹ The use in commerce requirement demands that the trademark applicant have a bona fide intent to use the mark in commerce, meaning all commerce that Congress may lawfully regulate.⁶⁰ For service providers, like the FDIC, a trademark satisfies this element when (1) the mark is “used or displayed in the sale or advertising of services” and (2) the services are “rendered in commerce” or “rendered in more than one State.”⁶¹ The distinctiveness requirement is prominently governed by the four-category system stemming from the decision *Abercrombie & Fitch Co. v. Hunting World, Inc.*, each resulting in a different level of protection for the mark.⁶²

The four categories include marks that are generic, descriptive, suggestive, and arbitrary or fanciful.⁶³ A generic mark is a mark that automatically indicates the product that is provided by the company and may never qualify for trademark protection.⁶⁴ An example of a generic mark would be a bagel shop called “Bagels.”⁶⁵ A descriptive mark describes the aspect of the goods without identifying the source

⁵⁶ Lanham Act § 45, 15 U.S.C. § 112.

⁵⁷ *What is a trademark?*, U.S. PAT. AND TRADEMARK OFF., <https://www.uspto.gov/trademarks/basics/what-trademark> (last visited Mar. 25, 2023).

⁵⁸ See *id.* (explaining the several reasons why trademark law protects both the business and the consumers).

⁵⁹ 15 U.S.C. § 1052(f) (“Except as expressly excluded in subsections (a), (b), (c), (d), (e)(3), and (e)(5) of this section, nothing in this chapter shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant’s goods in commerce.”).

⁶⁰ *Id.* § 1127.

⁶¹ *Aycock Engineering, Inc. v. Airflite, Inc.*, 560 F.3d 1350, 1357 (Fed. Cir. 2009).

⁶² See *Abercrombie & Fitch Co. v. Hunting World*, 537 F.2d 4, 9 (2d Cir. 1976) (explaining each category of trademark protection and the protection provided by each).

⁶³ *Id.*

⁶⁴ See *id.* (“A generic term is one that refers, or has come to be understood as referring, to the genus of which the particular product is a species. At common law neither those terms which were generic nor those which were merely descriptive could become valid trademarks, . . .”).

⁶⁵ See *Generic Trademark: Everything You Need to Know*, UPCOUNSEL TECH., <https://www.upcounsel.com/lanham-act> (last visited Mar. 25, 2023) (“Generic trademarks are common terms used to name products or services, for example, a brand of shoes called ‘shoes.’”).

from which the goods come.⁶⁶ A descriptive trademark does not qualify for protection without “secondary meaning,” also known as “acquired distinctiveness.”⁶⁷ A descriptive mark may acquire distinctiveness if it has either become distinctive as to the source of the product or if the mark has been used consistently and exclusively for five years before registration.⁶⁸ An example of a descriptive mark would be an ice cream shop called “cold and creamy.”⁶⁹ A suggestive mark is a mark that suggests the qualities of the product and requires consumers to put some thought into what product the company provides.⁷⁰ An example of a suggestive mark is Microsoft, suggesting a type of software company.⁷¹ An arbitrary mark is a mark that is the name of one product being used to sell another unrelated product, like Apple for computers.⁷² And a fanciful mark is a mark that is a made-up name for a product, like Xerox for

⁶⁶ *Strong Trademarks*, U.S. PAT. AND TRADEMARK OFF., <https://www.uspto.gov/trademarks/basics/strong-trademarks#:~:text=Descriptive%20trademarks%20merely%20describe%20some,in%20commerce%20over%20many%20years> (last visited Mar. 25, 2023).

⁶⁷ See *Sorensen v. WD-40 Co.*, 792 F.3d 712, 723 (7th Cir. 2015) (“Descriptive terms, after all, are protectable as a trademark if they have developed secondary meaning.”).

⁶⁸ See Lanham Act § 2(f), 15 U.S.C. § 1052(f) (“Except as expressly excluded in subsections (a), (b), (c), (d), (e)(3), and (e)(5) of this section, nothing in this chapter shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant’s goods in commerce.”); see *id.* (“The Director may accept as prima facie evidence that the mark has become distinctive, as used on or in connection with the applicant’s goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years before the date on which the claim of distinctiveness is made.”).

⁶⁹ See *Descriptive Trademark: Everything You Need to Know*, UPCOUNSEL TECH., <https://www.upcounsel.com/lanham-act> (last visited Mar. 25, 2023) (“A descriptive trademark identifies one or more characteristics of a product or service covered by the mark and only serves to describe the product.”).

⁷⁰ *Suggestive Trademark: Everything You Need to Know*, UPCOUNSEL TECH., <https://www.upcounsel.com/lanham-act> (last visited Mar. 25, 2023).

⁷¹ *Id.*

⁷² See *Arbitrary Trademark: Everything You Need to Know*, UPCOUNSEL TECH., <https://www.upcounsel.com/lanham-act> (last visited Mar. 25, 2023) (“An arbitrary trademark is a word or image that already exists, but it has nothing to do with the business that uses it. Apple Computers is one of the classic examples, since iPhones and laptops have nothing to do with fruit or cider. Shell gas stations and Camel cigarettes are other good examples.”).

printers.⁷³ The suggestive, arbitrary, and fanciful marks are all entitled to trademark protection without having to prove they have acquired distinctiveness.⁷⁴

The Lanham Act allows for numerous causes of action in the case of a violation,⁷⁵ but the two claims that will be addressed here are trademark infringement and dilution.

The trademark infringement claim includes using a mark that is either the same or similar to another individual's mark.⁷⁶ The standard for infringement is called the "confusingly similar" standard, which relies on the mark causing confusion, mistake, or deception in the eyes of the consumer.⁷⁷ Seven factors are called upon to determine if a mark is confusingly similar to another, which are enumerated in the *Polaroid v. Polarad* case.⁷⁸ These factors include (1) the strength of the plaintiff's trademark, (2) the degree of similarity between the two marks at issue, (3) the similarity of the goods and services at issue, (4) evidence of actual confusion, (5) purchaser sophistication, (6) the quality of the defendant's goods or services, and (7) the defendant's intent in adopting the mark.⁷⁹ Different circuits consider different factors, but there is much overlap between the circuits, and numerous *Polaroid* factors remain a popular choice among many circuit tests.⁸⁰

In addition to the trademark infringement claim, the trademark dilution claim is a cause of action based on an "association arising from the similarity between a mark or trade name and a famous mark"

⁷³ See *Fanciful Trademark: Everything You Need to Know*, UPCOUNSEL TECH., <https://www.upcounsel.com/lanham-act> (last visited Mar. 25, 2023) ("Fanciful trademarks are made-up terms invented for the single purpose of functioning as a trademark.").

⁷⁴ *Abercrombie & Fitch Co. v. Hunting World*, 537 F.2d 4, 17 (2d Cir. 1976) ("If a term is suggestive, it is entitled to registration without proof of secondary meaning. . . . It need hardly be added that fanciful or arbitrary terms enjoy all the rights accorded to suggestive terms as marks - without the need of debating whether the term is "merely descriptive" and with ease of establishing infringement.").

⁷⁵ See Lanham Act § 32(1)(a), 15 U.S.C. § 1114(1)(a) (listing the basis for the trademark infringement claim); *id.* § 1125(c) (listing the basis for the trademark dilution claim).

⁷⁶ 15 U.S.C. § 1114(1)(a), (b).

⁷⁷ *Id.*

⁷⁸ *Polaroid Corp. v. Polarad Elects.*, 287 F.2d 492, 495 (2d Cir. 1961).

⁷⁹ See *id.* ("Where the products are different, a prior owner's chance of success in a trademark infringement action is a function of many variables: the strength of his mark, the degree of similarity between the two marks, the proximity of the products, the likelihood that the prior owner will bridge the gap, actual confusion, and the reciprocal of defendant's good faith in adopting its own mark, the quality of defendant's product, and the sophistication of the buyers.").

⁸⁰ Although the FDIC could bring an action in different jurisdictions with different tests, each jurisdiction recognizes numerous factors that are either similar or identical to the *Polaroid* factors. Because of this, *Polaroid* has been a key case involving the standard for trademark infringement, and for purposes of this article, we will therefore rely on the polaroid factors for the confusingly similar analysis. Trademark Litigation: Likelihood of Confusion Tests by Circuit Chart, Practical Law Checklist 2-519-7062.

that impairs the distinctiveness or harms the reputation of a mark.⁸¹ There are two species of trademark dilution.⁸² “Dilution by blurring” prevents another mark from impairing the distinctiveness of a famous mark.⁸³ And “dilution by tarnishment” prevents another mark from harming the reputation of a famous mark.⁸⁴ Several factors are listed for consideration of a dilution by blurring claim, including (1) “[t]he degree of similarity between the mark or trade name and the famous mark,” (2) “[t]he degree of inherent or acquired distinctiveness of the famous mark,” (3) “[t]he extent to which the owner of the famous mark is engaging in substantially exclusive use of the mark,” (4) “[t]he degree of recognition of the famous mark,” (5) “[w]hether the user of the mark or trade name intended to create an association with the famous mark,” and (6) “any actual association between the mark or trade name and the famous mark.”⁸⁵ For dilution by tarnishment, what constitutes harm to a mark varies between jurisdictions, but generally includes an association that imposes different values onto a mark that the original trademark holder did not intend.⁸⁶

Overall, trademark dilution protects famous marks from losing the value they hold in consumers’ minds by preventing other marks from impairing their distinctiveness and harming their reputation.⁸⁷

B. Comparison of the FDIC False Advertising and Misrepresentation Statute to the Lanham Act

Several significant differences exist between the FDIC False Advertising and Misrepresentation statute and the Lanham Act. Many of these differences suggest that if the FDIC could enforce its name and logo as trademarks, it would expand the scope of enforcement against those making misrepresentations regarding its FDIC-insured status.

⁸¹ In order to qualify for a trademark dilution claim, the mark must be “famous.” 15 U.S.C. § 1125(b)(2). This is evaluated using the fame factors, including, (i) the duration, extent, and geographic reach of advertising and publicity of the mark, whether advertised or publicized by the owner or third parties, (ii) the amount, volume, and geographic extent of sales of goods or services offered under the mark, (iii) the extent of actual recognition of the mark, and (iv) whether the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register. *Id.*

⁸² 15 U.S.C. § 1125(c)(2)(B), (C)

⁸³ *Id.* § 1125(c)(2)(B),

⁸⁴ *Id.* § 1125(c)(2)(C).

⁸⁵ *Id.* § 1125(c)(2)(B).

⁸⁶ For example, there are several jurisdictions that say that the reputation of a mark may be harmed by the association created by a similar mark that is used to sell sex related products. *V Secret Catalogue, Inc. v. Moseley*, 605 F.3d 382, 388 (6th Cir. 2010).

⁸⁷ 15 U.S.C. § 1125(c)(2)(B), (C).

1. Broader Standard for Bringing a Claim

Under the current FDIC statute, several requirements must be proved to bring a successful claim against a possible infringer.⁸⁸ For Section 328.102(a) of the regulation, this requirement is the “explicit or implied” representation of coverage when that coverage does not exist, specifically regarding the use of the FDIC logo and name.⁸⁹ For example, this would mean that to bring a successful claim, the FDIC would have to prove that using its name or logo would mislead the consumer to believe that its deposit was covered when it was not.⁹⁰

In comparison, a trademark infringement claim would require that the FDIC name or logo was used and that the mark is “confusingly similar.”⁹¹ The confusingly similar standard would result in a much broader ability to control the use of the name or logo of the FDIC. When applying the *Polaroid* factors to the confusion analysis, the first two factors, (1) the strength of the plaintiff’s trademark and (2) the degree of similarity between the two marks at issue, weigh overwhelmingly in favor of trademark infringement.⁹² The FDIC has been a prominent participant in the US banking system for 90 years, indicating immense amounts of secondary meaning and thus a stronger mark.⁹³ Further, since the FDIC has been an exclusive user of its mark for more than five years, the statutory presumption for acquired distinctiveness would also be satisfied.⁹⁴ Additionally, the mark is entirely identical, showing the highest degree of similarity possible.⁹⁵ This is commonly referred to as “direct infringement,” where the use of

⁸⁸ Advertisement of Membership, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo, 12 C.F.R. § 328.100 (2022).

⁸⁹ *Id.* § 328.102(a).

⁹⁰ *See id.*

⁹¹ 15 U.S.C. § 1114(1)(a).

⁹² *See Polaroid Corp. v. Polarad Elects.*, 287 F.2d 492, 495 (2nd Cir. 1961) (explaining how a similarity between the marks lends towards a finding of trademark infringement based on the confusingly similar standard).

⁹³ *See* FED. DEPOSIT INS. CORP., *THE FIRST FIFTY YEARS: A HISTORY OF THE FDIC 1933–1983*, at 3 (1984) (“Established by the Banking Act of 1933 at the depth of the most severe banking crisis in the nation’s history, its immediate contribution was the restoration of public confidence in banks.”).

⁹⁴ *See* 15 U.S.C. § 1052(f) (“The Director may accept as prima facie evidence that the mark has become distinctive, as used on or in connection with the applicant’s goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years before the date on which the claim of distinctiveness is made.”).

⁹⁵ *See Polaroid*, 287 F.2d 492, 495 (2nd Cir. 1961) (explaining how a similarity between the marks lends towards a finding of trademark infringement based on the confusingly similar standard).

identical marks causes the confusion.⁹⁶ Therefore, finding infringement of the FDIC marks would be much easier to prove than a claim under the FDIC statute.⁹⁷ In addition, factor four of the *Polaroid* test is very similar to the requirement under the current FDIC statute, that being evidence of actual confusion.⁹⁸ This means that even without evidence of actual confusion, a trademark infringement claim could still succeed, but the current FDIC statute would be entirely stifled.⁹⁹

For Section 328.102(b) of the regulation, the requirement for a successful claim is that there is a “false or misleading” representation regarding the deposit insurance.¹⁰⁰ This would result in the same argument as above, where confusion would be a much easier standard to apply because of *Polaroid* factors one and two.¹⁰¹ Further, the lack of any misrepresentation would stifle a claim under the FDIC statute where a trademark infringement claim could still succeed.¹⁰²

In addition to trademark infringement, the trademark dilution claim would also be a broader claim than the current FDIC statute. The first four factors for considering a dilution by blurring claim would all weigh heavily in favor of the FDIC.¹⁰³ The use of the marks would be identical, and the secondary meaning of the FDIC name would be prominent.¹⁰⁴ Further, the FDIC has been the only entity to use the marks for 90 years, and the mark is a staple within commercial banks today.¹⁰⁵ This would give a dilution by blurring claim a high likelihood for success.¹⁰⁶

⁹⁶ *Direct Infringement*, CORNELL LAW SCHOOL: LEGAL INFO. INST., https://www.law.cornell.edu/wex/direct_infringement#:~:text=In%20trademark%20law%2C%20direct%20infringement,cause%20mistake%2C%20or%20to%20deceive (last visited Mar. 25, 2023).

⁹⁷ *Id.*

⁹⁸ *Compare Polaroid*, 287 F.2d 492, 495 (2d Cir. 1961), with *Advertisement of Membership, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo*, 12 C.F.R. § 328.100 (2022).

⁹⁹ *See Polaroid*, 287 F.2d 492, 495 (2d Cir. 1961) (explaining that not all factors for confusion are required to succeed on a trademark infringement claim).

¹⁰⁰ 12 C.F.R. § 328.102(b).

¹⁰¹ *Compare Polaroid*, 287 F.2d 492, 495 (2d Cir. 1961), with 12 C.F.R. § 328.102(a).

¹⁰² *Compare Polaroid*, 287 F.2d 492, 495 (2d Cir. 1961), with 12 C.F.R. § 328.102(a).

¹⁰³ *See Lanham Act* § 43(c)(2)(B), 15 U.S.C. § 1125(c)(2)(B) (listing the factors for considering a trademark dilution claim).

¹⁰⁴ *Id.*

¹⁰⁵ *See id.* (reasoning that because the marks are identical and the FDIC brand is strong, that the factors listed in the statute would weigh heavily in favor of finding a claim for trademark dilution).

¹⁰⁶ *Id.*

Overall, trademark law would make these claims much more likely to succeed, and the FDIC would also have more discretion over the moderation of the use of its trademarks.¹⁰⁷ This would also mean the FDIC could sooner stop the harm caused by consumer confusion.¹⁰⁸

2. Scierter Requirement

A notable feature of Section 328.102(b) of the FDIC regulation is the scierter requirement for bringing a claim against an infringer.¹⁰⁹ To “knowingly” make false or misleading representations about deposit insurance substantially raises the bar for proving this claim because the FDIC would be required to argue that, in the infringer’s mind, they knew they were misleading consumers with its representations.¹¹⁰

Under the Lanham Act and the *Polaroid* factors, however, there is no requirement of knowledge or any other scierter of the infringer.¹¹¹ This would make a claim much easier to prove because there is no guesswork regarding what the infringer really meant when making representations.¹¹² However, a factor of the *Polaroid* test does include “the defendant’s intent in adopting the mark,”¹¹³ and a factor for dilution by blurring is “whether the user of the mark or trade name intended to create an association with the famous mark.”¹¹⁴ This means that being able to prove bad intent on the part of the infringer would

¹⁰⁷ See *Polaroid*, 287 F.2d 492, 495 (2nd Cir. 1961) (reasoning that the wide variety of factors provide a wide array of arguments that can be made against possible infringers and that more than just these factors may be considered in the analysis).

¹⁰⁸ *Id.*

¹⁰⁹ Advertisement of Membership, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo, 12 C.F.R. § 328.102(b) (2022).

¹¹⁰ *Id.*; see also Toby Gilbert, *Regulators Have a Weak Case Against FTX on Deposit Insurance*, COINTELEGRAPH (Aug. 26, 2022), <https://cointelegraph.com/news/regulators-have-a-weak-case-against-ftx> (explaining how the “knowing” requirement would be difficult to establish given the specific facts of FTX’s representation about FDIC insurance).

¹¹¹ Compare Lanham Act § 43(c)(2), 15 U.S.C. § 1125(c)(2), and *id.* § 1114, with *Polaroid*, 287 F.2d 492 (2nd Cir. 1961) (demonstrating the absence of any scierter requirement that is necessary to bring a trademark claim).

¹¹² See *Mens Rea*, CORNELL LAW SCHOOL: LEGAL INFO. INST., https://www.law.cornell.edu/wex/mens_rea (last visited Apr. 21, 2023) (explaining the different mental states required to prove different types of claims and how they get progressively harder to prove the closer you get to intent).

¹¹³ *Polaroid Corp. v. Polarad Elects.*, 287 F.2d 492 (2d Cir. 1961).

¹¹⁴ 15 U.S.C. § 1125(c)(2).

increase the likelihood of success on a trademark claim.¹¹⁵ But it would by no means prohibit the success of these claims as it would under the FDIC statute.¹¹⁶

3. Expansive Case Law

Another important distinction between the FDIC statute and the Lanham Act is that the case law surrounding the Lanham Act dwarfs that surrounding the FDIC statute.¹¹⁷ Because trademark laws have taken many shapes and forms until its culmination in the Lanham Act, trademark disputes have been at issue for a significant period of time.¹¹⁸ This means that if the FDIC wanted to bring a claim against a possible infringer, they could rely on a significantly larger amount of cases than if they were litigating solely with the FDIC statute and regulations.¹¹⁹

This also means that if infringers were to get creative with how they may use the FDIC name and logo, the vast amount of trademark case law would help the FDIC craft an innovative solution to the infringement.¹²⁰ For example, if an infringer were to carefully suggest that it was an FDIC-insured institution without using the exact FDIC name and logo, the confusingly similar standard may still be used to file a claim against them by speaking specifically to the caselaw of the jurisdiction.¹²¹

¹¹⁵ Compare *Polaroid*, 287 F.2d 492, 495 (2d Cir. 1961), and 15 U.S.C. § 1125(c)(2), with Advertisement of Membership, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo, 12 C.F.R. § 328.102(b) (2022) (demonstrating how the lack of a knowledge requirement could completely defeat a claim under the FDIC statute, but would not defeat a trademark claim).

¹¹⁶ Compare *Polaroid*, 287 F.2d 492, 495 (2d Cir. 1961), and 15 U.S.C. § 1125(c)(2), with 12 C.F.R. § 328.102(b) (2022) (demonstrating how the lack of a knowledge requirement could completely defeat a claim under the FDIC statute, but would not defeat a trademark claim).

¹¹⁷ See *Key Cases and Definitions in Intellectual Property Law*, WASH. UNIV. SCH. OF L. (Jun. 10, 2021), <https://onlinelaw.wustl.edu/blog/key-cases-definitions-in-intellectual-property-law/> (explaining the vast history of trademark law in the United States and the large amount of significant caselaw surrounding trademark law).

¹¹⁸ *Id.*

¹¹⁹ See *id.* (reasoning that the large amount of caselaw surrounding the Lanham Act would provide the FDIC with the tools necessary to stop infringers from confusing consumers).

¹²⁰ It is very common in trademark law for someone to attempt to evoke another brand by trying to emulate their trademarks without copying them identically. In particular, parody in trademark law has been a hot topic as of recent, and presents much case law that could be relevant if a FinTech were to evoke the idea that they may be FDIC insured without directly copying their name or logo. See generally *Louis Vuitton Malletier S.A. v. Haute Diggity Dog, LLC.*, 507 F.3d 252 (4th Cir. 2007) (explaining how one company may have a valid claim against another for creating a dog toy that replicates another's product without using the exact words and colors, but rather brings the ideas of the other product to mind through the dog toy).

¹²¹ Compare *Polaroid Corp. v. Polarad Elects.*, 287 F.2d 492, 495 (2d Cir. 1961), with 12 C.F.R. § 328.102(a).

Applicant Details

| First Name | Timon | | |
|--|---|---------|--|
| Last Name | Amirani | | |
| Citizenship Status | U. S. Citizen | | |
| Email Address | amirani2024@lawnet.ucla.edu | | |
| Address | <table> <tr> <th>Address</th> </tr> <tr> <td> Street 1319 Constitution Avenue N.E., Apt. A City Washington, D.C. State/Territory District of Columbia Zip 20002 Country United States </td> </tr> </table> | Address | Street 1319 Constitution Avenue N.E., Apt. A City Washington, D.C. State/Territory District of Columbia Zip 20002 Country United States |
| Address | | | |
| Street 1319 Constitution Avenue N.E., Apt. A City Washington, D.C. State/Territory District of Columbia Zip 20002 Country United States | | | |
| Contact Phone Number | 9495736954 | | |

Applicant Education

| | |
|-----------------------|---|
| BA/BS From | Cornell University |
| Date of BA/BS | May 2017 |
| JD/LLB From | University of California at Los Angeles (UCLA) Law School |
| | http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=90503&yr=2011 |
| Date of JD/LLB | May 10, 2024 |
| Class Rank | I am not ranked |
| Law Review/Journal | Yes |
| Journal(s) | UCLA Journal of Law and Technology |
| Moot Court Experience | Yes |
| Moot Court Name(s) | UCLA Moot Court Spring 2023 Competition |

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Petherbridge, Lee
lee.petherbridge@lls.edu
(213) 736-8194

Carbado, Devon
Carbado@law.ucla.edu
(310) 825-3365

Chong, Eugene
chong@law.ucla.edu

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

TIMON AMIRANI

1319 Constitution Ave. NE, Apt. A, Washington, D.C. 20002 | 949.573.6954 | amirani2024@lawnet.ucla.edu

June 12, 2023

The Honorable Juan R. Sanchez
United States District Court
for the Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Re: Judicial Clerkship Application

Dear Chief Judge Sanchez:

I am a rising third-year law student at UCLA School of Law writing to apply for the position of judicial clerk in your chambers beginning in September 2024, or any subsequent term. As an aspiring patent litigator, I am interested in clerking in your chambers to further my legal education and understand the process behind judicial decision-making at the district court level.

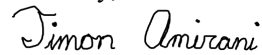
My academic and professional background will allow me to add value to your chambers. After graduating from Cornell with a Bachelor of Science in Electrical and Computer Engineering, I was a product engineer for four years. During my time at UCLA School of Law, I have developed legal research and writing skills to complement the analytical and technical skills I acquired in my engineering education. Beyond learning patent doctrine, I have particularly enjoyed my Federal Courts, Constitutional Criminal Procedure, and Antitrust courses.

Outside of the classroom, this year I was a staff editor for the *UCLA Journal of Law & Technology* (JOLT), where I enjoyed reading the latest scholarship in the fields of law, technology, and policy. Additionally, as a research assistant for Professor Ted Parson, I researched and wrote memoranda on the legal and policy aspects of artificial intelligence and geoen지니어ing. I further expanded my legal knowledge through my summer experience as a 1L IP Litigation Scholar at Latham & Watkins, where I researched various aspects of patent law, including claim construction, enhanced damages, and technical expert depositions. Beyond my second year of law school, I have returned to the D.C. area as a 2L Diversity Scholar at Latham & Watkins in the IP Litigation Group. In Fall 2023, I will be completing a judicial externship in Judge Christina Snyder's chambers at the U.S. District Court for the Central District of California. Finally, I will be serving as a Chief Managing Editor for JOLT for the 2023-2024 academic year.

Aside from my technical background and legal education, I've also developed a variety of nontechnical skills that will allow me to contribute to your chambers. My time as an engineer helped me develop a problem solving framework to find solutions to legal issues. Spending hours searching for extra semicolons in pieces of code has given me a keen eye for detail, which I apply to reading cases and writing briefs. I further honed this attention to detail through continuing Farsi lessons, which have allowed me to communicate in-depth with my grandmother for the first time in my life, which I am extremely proud of.

In sum, I believe that my research and writing skills combined with my professional and academic experiences will enable me to make a positive contribution to your chambers. Enclosed please find a copy of my resumé, my law school transcript, a brief writing sample, and letters of recommendation from Professors Devon Carbado and Lee Petherbridge. I welcome the opportunity to interview with you, and I look forward to hearing from you soon. Thank you for your time and consideration.

Sincerely,


Timon Amirani

TIMON AMIRANI

1319 Constitution Ave. NE, Apt. A, Washington, D.C. 20002 | 949.573.6954 | amirani2024@lawnet.ucla.edu

EDUCATION

UCLA School of Law, Los Angeles, CA

J.D. Candidate, May 2024 | GPA: 3.65

Honors: Sidney B. Williams, Jr. Scholar (AIPLA's Foundation for Advancement of Diversity in IP Law)

Journals: Journal of Law and Technology, *Incoming Chief Managing Editor*

Eligibilities: Patent Bar Eligible

Cornell University, College of Engineering, Ithaca, NY

B.S., Electrical and Computer Engineering, May 2017 | GPA: 3.42

Honors: Dean's List (Spring 2014, 2017)

Leadership: Cornell Barbell Club, *Olympic Weightlifting Co-Chair*; Engineers Without Borders, *Team Lead*

LEGAL EXPERIENCE

United States District Court for the Central District of California, Los Angeles, CA

Fall 2023

Judicial Extern to the Honorable Christina A. Snyder

Latham & Watkins, LLP, Washington, D.C.

May 2022 – July 2022; May 2023 – July 2023

Summer Associate, 2L Diversity Scholar, May 2023 – July 2023

Summer Associate, 1L Intellectual Property Litigation Scholar, May 2022 – July 2022

- Conducted legal research on patent topics, including treble damages, indefiniteness, and terms of degree for claim construction
- Identified and catalogued relevant experts and publications in preparation for depositions
- Co-led a *pro bono* project to obtain permanent residency for a family of Afghan refugees: coordinated across teams to ensure application materials of various family members were consistent, identified missing documentation, and submitted finalized forms to U.S. Customs

UCLA School of Law, Los Angeles, CA

September 2022 – May 2023

Student Practitioner, UCLA Patent Clinic, August 2022 – May 2023

- Co-drafted patent application from start to finish and submitted it to the USPTO on behalf of *pro bono* client

Research Assistant to Professor Ted Parson, September 2022 – May 2023

- Researched and wrote memoranda on issues involving the legal landscape surround geoengineering, artificial intelligence, machine learning, and ozone-depleting substances for scholarly reports

ENGINEERING EXPERIENCE

Analog Devices, Wilmington, MA

July 2017 – July 2021

Product Engineer, High Speed Converters

- Co-led DAC evaluation of new transceiver radio product for 5G communications, which included writing software for evaluation and analysis of evaluation results
- Led the evaluation of DAC metrics of 4T4R MxFE transceiver radio system for communications technologies such as cell phone base stations; conducted various tests in lab to ensure functionality and signal integrity

The MITRE Corporation, Bedford, MA

August 2015 – December 2015; June 2016 – August 2016

Embedded Software (2015) and Aerial Communications Co-op (2016) (secret clearance required)

- Characterized performance of military communications system for military ground vehicles in a lab setting
- Programmed and developed digital record and playback resource for use in a software defined GPS platform

LANGUAGES, SKILLS & INTERESTS

Farsi (conversational proficiency); Python, MATLAB

Enjoys tennis, New York Times crosswords, Brazilian Jiu Jitsu, guitar, chess, and basketball

Student Copy / Personal Use Only | [305679965] [AMIRANI, TIMON]

University of California, Los Angeles

LAW Student Copy Transcript Report

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Student Information

Name: AMIRANI, TIMON
 UCLA ID: 305679965
 Date of Birth: 09/02/XXXX
 Version: 08/2014 | SAITONE
 Generation Date: June 02, 2023 | 07:01:27 PM
 This output is generated only once per hour. Any data changes from this time will be reflected in 1 hour.

Program of Study

Admit Date: 08/23/2021
 SCHOOL OF LAW
 Major: LAW
 Specializing in MEDIA, ENTERTAINMENT, TECHNOLOGY, AND SPORTS

Degrees | Certificates Awarded

None Awarded

Graduate Degree Progress

PR COMPLETED IN LAW 312, 22F
 SAW COMPLETED IN LAW 525, 23S

Previous Degrees

None Reported

California Residence Status

Nonresident

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Fall Semester 2021

Major:
LAW

| | | | | | |
|-----------------------------|----------|------------|------------|------------|------------|
| INTRO LEGL ANALYSIS | LAW 101 | 1.0 | 0.0 | P | |
| LAWYERING SKILLS | LAW 108A | 2.0 | 0.0 | IP | |
| Multiple Term - In Progress | | | | | |
| PROPERTY | LAW 130 | 4.0 | 16.0 | A | |
| TORTS | LAW 140 | 4.0 | 13.2 | B+ | |
| CIVIL PROCEDURE | LAW 145 | 4.0 | 13.2 | B+ | |
| | | <u>Atm</u> | <u>Psd</u> | <u>Pts</u> | <u>GPA</u> |
| Term Total | | 13.0 | 13.0 | 42.4 | 3.533 |

Spring Semester 2022

| | | | | | |
|-----------------------------|------------|------------|------------|------------|------------|
| CONTRACTS | LAW 100 | 4.0 | 13.2 | B+ | |
| LGL RSRCH & WRITING | LAW 108B | 5.0 | 16.5 | B+ | |
| End of Multiple Term Course | | | | | |
| CRIMINAL LAW | LAW 120 | 4.0 | 16.0 | A | |
| CONSTITUT LAW I | LAW 148 | 4.0 | 14.8 | A- | |
| CRIT RACE JUDGMENTS | LAW 165 | 1.0 | 0.0 | P | |
| | | <u>Atm</u> | <u>Psd</u> | <u>Pts</u> | <u>GPA</u> |
| | Term Total | 18.0 | 18.0 | 60.5 | 3.559 |

Fall Semester 2022

| | | | | | |
|-----------------------------|----------|------------|------------|------------|------------|
| EVIDENCE | LAW 211 | 3.0 | 9.9 | B+ | |
| ANTITRUST LAW I | LAW 240 | 3.0 | 12.0 | A | |
| PATENT LAW | LAW 306 | 3.0 | 12.0 | A | |
| ADVNCED LGL RESEARCH | LAW 397 | 1.0 | 0.0 | P | |
| PR ISSUES BUS TRANS | LAW 652 | 3.0 | 11.1 | A- | |
| PATENT CLINIC | LAW 760A | 3.0 | 0.0 | IP | |
| Multiple Term - In Progress | | | | | |
| | | <u>Atm</u> | <u>Psd</u> | <u>Pts</u> | <u>GPA</u> |
| Term Total | | 13.0 | 13.0 | 45.0 | 3.750 |

Student Copy / Personal Use Only | [305679965] [AMIRANI, TIMON]

Spring Semester 2023

| | | | | |
|-----------------------------|----------|------------|------------|------------|
| CRIM PRO:INVESTIGTN | LAW 202 | 4.0 | 13.2 | B+ |
| FEDERAL COURTS | LAW 212 | 3.0 | 11.1 | A- |
| PATENT INTENSIVE | LAW 525 | 3.0 | 12.0 | A |
| PATENT CLINIC | LAW 760B | 6.0 | 24.0 | A |
| End of Multiple Term Course | | | | |
| INTENSIVE EDITING | LAW 906 | 1.0 | 0.0 | P |
| | | | | |
| | | <u>Atm</u> | <u>Psd</u> | <u>Pts</u> |
| Term Total | | 17.0 | 17.0 | 60.3 |
| | | | | 3.769 |

LAW Totals

| | | | | |
|---------------------------|------------|------------|------------|------------|
| | <u>Atm</u> | <u>Psd</u> | <u>Pts</u> | <u>GPA</u> |
| Pass/Unsatisfactory Total | 4.0 | 4.0 | N/a | N/a |
| Graded Total | 57.0 | 57.0 | N/a | N/a |
| Cumulative Total | 61.0 | 61.0 | 208.2 | 3.653 |

Total Completed Units 61.0

END OF RECORD
NO ENTRIES BELOW THIS LINE



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Lee Petherbridge, Ph.D.
Professor of Law
213-736-8194
lee.petherbridge@lls.edu

May 25, 2023

Re: Clerkship Application of Timon Amirani

Dear Judge:

I write in support of Timon Amirani's application for the position of Judicial Clerk. I think Timon is a talented nascent lawyer and I firmly believe he will make an excellent clerk.

I came to know Timon as a student in my Patent Law class at UCLA School of Law. The style of teaching in the course is very colloquy-driven and favors students who prepare and who have developed some depth of understanding before class begins. Given the intensity of the course and the frequency with which I am able to engage each student, I have a good opportunity to get to know many of the students. In Timon's case, I also had the opportunity to interact with him in office hours.

In the classroom, Timon exhibited a high level of preparation and performance. He followed class discussions very well, and was able to clearly articulate points and make arguments not only in response to my questions but also in connection with ideas being developed by others in the room. Timon also showed courage in his willingness to volunteer to address novel practice problems. Throughout our class discussions, Timon showed the important lawyerly trait of being able to effectively explain a contrary position while still showing respect for the good faith in which the opposing position was offered.

In office hours, the questions Timon asked were clearly very informed. Which is to say, they were the sorts of questions one would ask after one had analyzed, correctly, some of the surrounding law. What I recall most from office hours, however, is what I perceived to be a genuine enthusiasm for patent law. That perception finds some support, I think, in Timon's transcript. Not only did Timon take the core Patent Law class, which I taught, he has also taken the Patent Intensive course, which I believe deals with some specialized issues of patent litigation. In addition, Timon has served in the Patent Clinic, helping to prepare patent applications for *pro bono* clients. In this vein, I note that Timon has also taken Antitrust, a topic

once thought to be very important to patent litigation and whose importance might be reemerging to some extent.

Timon has worked hard outside of the classroom to develop knowledge in patent law, as well as in intellectual property and technology more generally. He is a staff editor at the *UCLA Journal of Law and Technology*, and as a 1L summer associate performed patent work at the D.C. office of Latham & Watkins. My understanding is that he is returning to that firm's D.C. office for a second summer.

The Patent Law class did not include graded writing so I am limited in what I can say concerning Timon's written analysis. That said, I thought his verbal demonstration of analytical skill was very good. Timon's substantive knowledge was also very good. Timon received an "A" in the class, which was the highest grade possible.

I recognize that this letter emphasizes Timon's developing patent and intellectual property law pedigree. It therefore seems remiss to close without underscoring my view that Timon has all the attributes of developing into an excellent lawyer—not *just* an excellent patent lawyer. Timon seems to me to be intelligent, industrious, and easy to work with. I have every expectation that he will do a great job across the full range of legal matters upon which he might be asked to work.

The bottom line is that I think Timon is a talented nascent lawyer who will make an excellent Judicial Clerk. I sincerely hope you decide to offer him the opportunity.

Respectfully,

Lee Petherbridge, J.D., Ph.D.
Professor of Law



DEVON W. CARBADO
THE HONORABLE HARRY PREGERSON CHAIR IN LAW

SCHOOL OF LAW
BOX 951476
LOS ANGELES, CALIFORNIA 90095-1476
Phone: (310) 825-3365
Email: carbado@law.ucla.edu

June 5, 2023

Dear Judge:

I am writing enthusiastically to recommend Timon Amirani for a clerkship in your chambers. Timon is easily one of the most unassuming students with whom I have worked. He has a wonderful disposition, is extraordinarily hardworking, and exhibits precisely the kind of intellectual ability and work ethic that will serve him well as a law clerk.

By way of background, I am the Honorable Harry Pregerson and Distinguished Professor of Law at the University of California at Los Angeles School of Law, where I have served as a member of the faculty since 1997. I teach Constitutional Criminal Procedure, Constitutional Law, and various courses that focus on race and the law.

I met Timon in my 1L Supreme Court Decisionmaking seminar. The course required students to read original Supreme Court cases and rewritten ones. The rewritten opinions drew on various critical theories of law to illustrate how courts could employ those theories to shape the development of legal doctrine across many substantive areas.

Timon's participation in that course was exemplary. Even as a 1L, he evidenced the ability to perform nuanced doctrinal and theoretical analyses. More specifically, Timon didn't just critique the law. He was able to work within the constraints of doctrine to articulate other possibilities.

I also had the opportunity to teach Timon in Constitutional Criminal Procedure, where I witnessed him grow as a sharp, inquisitive, and engaging student with a profound investment in mastering the various doctrinal areas that course covers. Timon was always prepared for and an enthusiastic participant in class. He *really* cared about getting things right—and *really* pushed himself to maximize his potential.

If ever there was a student with a growth mindset, it is Timon. One of the requirements of Constitutional Criminal Procedure is that students complete five in-class assessments. Timon's first in-class assessment was perfectly fine but certainly not outstanding. His subsequent in-class assessments were completed at the highest level of achievement. Truly terrific work.

Finally, as I hinted at the beginning of this letter and want to emphasize now, Timon is one of the most affable students I have taught. He was a delightful person to engage inside and outside of the classroom. I surmise that you and your clerks will thoroughly enjoy working with him.

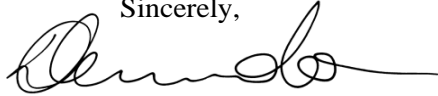
In closing, Timon has worked hard to be a competitive clerkship candidate. In my view, he has earned and deserves the opportunity.

June 5, 2023

Page 2

Please let me know if you have any questions or require any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carbado', with a long horizontal flourish extending to the right.

Devon W. Carbado
The Honorable Harry Pregerson Chair in Law

UCLA School of Law

EUGENE K. CHONG
LECTURER IN LAW

SCHOOL OF LAW
BOX 951476
LOS ANGELES, CALIFORNIA 90095-1476
Phone: (213)327-4618
Email: chong@law.ucla.edu

May 25, 2023

Dear Judge:

It is with great pleasure that I am writing to offer a formal recommendation for Timon Amirani. For the past seven years, I have been an adjunct professor at the UCLA School of Law where I teach a yearlong course in patent prosecution and supervise the UCLA Patent Law Clinic. In addition, I am a former judicial extern of the US district courts, a former deputy district attorney, and a founding partner at an intellectual property law firm. I hope my perspective will be helpful to you in evaluating Timon for a judicial clerkship position in your chambers.

Timon was in my patent course for the past two semesters and distinguished himself as a superb student. He was able to dissect complex legal documents, including technical patent documents, and always brought great insight during class discussions. In particular, he was able to use his education and training in electrical and computer engineering to explain both technical aspects and provide deep legal analysis of assigned patent documents.

As part of the UCLA Patent Law Clinic, the students provide pro bono patent services to a client base traditionally excluded from access. This past academic year, we had over 500 requests for our services and Timon was assigned over 50 potential clients. He was tasked with reviewing and narrowing down the requests, interviewing top potential clients, and representing a single client. In dealing with potential clients and his selected client, he showed empathy and demonstrated high professional abilities.

For his client, Timon had to conduct multiple invention disclosure meetings and draft a complete patent application related to a technically complex snow-melting device. Upon reviewing Timon's final work product, the client stated, "First, I would like to say that I am really, really impressed by your work. This draft looks really thorough and I feel, explains my design pretty well. It accurately describes everything I told you about the system."

Beyond the classroom, Timon organizes a weekly basketball game with fellow law students. At Timon's invitation, and for the first time in many years, I have started to play basketball again. I have joined in on their games and have observed that Timon has great leadership and interpersonal skills. I believe Timon exhibits many of the qualities to be successful in any professional setting that he should pursue. I highly recommend Timon and hope you will consider him for the position of Judicial Clerk. I have full faith that he will meet and exceed all expectations for the position. Should you have any questions, please feel free to contact me.

Sincerely,
Eugene K. Chong
Lecturer in Law

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WRITING SAMPLE

The attached writing sample is an excerpt from a brief submitted for the UCLA Moot Court Spring 2023 Competition. The case involved a challenge to a hypothetical statute, HB 3420, which restricted a social media company's ability to censor content and whether the statute violated the company's First Amendment right to freedom of speech.

The question presented was: Does HB 3420, which restricts a social media company's ability to censor content by California users and journalists, violate Squabble's First Amendment right to freedom of speech?

I represented the petitioner, a fictional social media company Squabble. The rules of the competition required the brief to be a maximum of twelve pages with the argument portion being a maximum of eight pages. The competition was based on a closed universe of cases.

This brief was lightly edited in a peer review process. The analysis is an entirely original work product, and the final writing sample is substantially my own.

Introduction

Respondents Arthur Calypso (“Calypso”) and the state of Califforida seek to seriously damage Petitioner Squabble’s ability to promote its motto of “Truth” by seeking to enforce Califforida law HB 3420. HB 3420 targets a large social media platform’s ability to exercise editorial judgment over what messages to propagate and what values to foster among its community. The First Amendment protects these editorial judgments, and thus the Respondents cannot succeed in their claim.

First, Squabble exercises editorial judgment protected by the First Amendment, as they communicate a message through their editorial decisions. Second, HB 3420 triggers heightened scrutiny, as it is a regulation on speech. Finally, HB 3420 fails under heightened scrutiny, as it does not advance a substantial government interest unrelated to free speech and is a greater restriction than is essential.

Statement of the Case

Squabble is a social media company that began as a forum for journalists. (R at 3). Squabble intentionally differs its policies from those of its peer sites to uphold its motto of “Truth.” (R at 3-4). Squabble screens content before it is posted to the site. (R at 4). Squabble sends all content through an initial filtering algorithm, which checks for violations of its terms and conditions. (R at 4). The terms and conditions outline that the site will not post content involving copyright infringement, gore, language “encouraging violent, harmful, or illegal conduct,” obscenity, plagiarism, pornography, or “verifiably false information or links to verifiably false information.” (R at 4). Although ninety-nine percent of posts make it through the first algorithm, a more rigorous second algorithm uses reverse-image matching and internet searches to scan posts that raise suspicion. (R at 4). Finally, any content flagged by the second

algorithm is checked by a member of Squabble’s human review board. (R at 4). Squabble demonstrates this filtering process through personnel decisions as well: in 2020, Squabble fired two people from their review board for failure to screen inappropriate content. (R at 5).

Squabble further diverges from its competitors by treating user posts as site content, rather than as products of an open forum. (R at 5). Each post has a one hundred character minimum, and there is no direct messaging. (R at 5). Each post contains a Squabble watermark in the top right corner. (R at 5). The site features “Active” and “Top Stories” tabs, which link to popular user posts and generally popular posts, respectively. (R at 5). Rather than utilizing a single feed, Squabble splits its homepage into “Home” and “Following” columns. (R at 5).

Squabble has been involved in a variety of censorship controversies. They suspended a liberal activist after the activist repeatedly attempted to post about sending political opponents to the hospital. (R at 5). Squabble’s human review board decided to censor a movie trailer after their algorithms flagged it for nudity. (R at 5-6). Finally, the WallTimes Post recently criticized Squabble for censorship of conservative journalists. (R at 6).

In early 2021, the Califfloida legislature passed HB 3420, titled “Prohibition on Viewpoint-Based Censorship by Social-Media Sites.” (R at 6). The statute prohibits censorship by social media platforms based on viewpoint and geographic location. (R at 21). It does not allow social media platforms to append statements to user-generated content; however, courts have yet to decide whether platforms can comment a disclaimer under user posts (R at 21). The statute further prohibits social media platforms from de-platforming “journalistic enterprises” based on the content of their publication or broadcast. (R at 21).

HB 3420 applies only to social media platforms with annual gross revenues of at least one hundred million dollars or at least one hundred million monthly global individual

participants. (R at 21). A journalistic enterprise is broadly defined as any Califfloida entity that (a) publishes more than one hundred thousand words online and has at least fifty thousand paid subscribers or one hundred thousand monthly users; (b) publishes at least one hundred hours of audio or video content online and has at least one hundred million annual viewers; (c) operates a cable channel that provides more than forty hours of content per week to more than one hundred thousand cable subscribers; or (d) operates under an FCC broadcast license. (R at 21-22).

If a social media platform violates HB 3420, it can be fined up to five million dollars and must bring its conduct into compliance. (R at 6). After signing HB 3420, Califfloida Governor Minerva Sloan stated that the statute will curtail social media companies' "ideologically based decisions" regarding publishing. (R at 6).

Arthur Calypso is a conservative journalist and the founder of ACNews, an independent publication based in Califfloida. (R at 3). While they operate a standard website, ACNews obtains most of its revenue through premium subscribers, who pay for access to exclusive content such as videos and newsletters. (R at 3). Calypso and ACNews have active presences on other social media sites, with millions of followers on Twitter and YouTube each as of December 2022. (R at 3). In October 2021, Calypso was suspended from Squabble for posting verifiably false information and language encouraging harmful conduct. (R at 7).

Calypso filed suit against Squabble in Califfloida state court, seeking damages under HB 3420, the reinstatement of his account, and an order that Squabble comply with HB 3420. (R at 7). The Califfloida Attorney General, Indigo Katz, joined Calypso in his official capacity. (R at 7). Squabble removed the action to federal district court and countersued, alleging that HB 3420 interferes with its editorial judgment and forces the company to host content it disagrees with, and thus violates Squabble's First Amendment rights. (R at 7-8). The district court found for

Squabble and ruled HB 3420 unconstitutional. (R at 8). The Court of Appeals for the Fourteenth Circuit reversed. (R at 13). Squabble now seeks to overturn the judgment of the appellate court.

Argument

I. Squabble’s Editorial Judgments and Message Are Speech Protected by the First Amendment

“Congress shall make no law . . . abridging the freedom of speech.” U.S. Const. amend. I.

A. Squabble’s Editorial Judgments Regarding Site Content and Structure Are Speech

As a cornerstone of American democracy, the First Amendment protects the ability of private entities to make editorial judgments as to what content to disseminate and how to disseminate it. *Miami Herald Pub’g Co. v. Tornillo*, 418 U.S. 241, 256 (1974). Editorial judgment as to what content to disseminate is an exercise of speech. *See Sorrell v. IMS Health, Inc.*, 564 U.S. 552, 570 (2011) (finding consistent holdings that “dissemination of information [is] speech within the meaning of the First Amendment”). Speech protections extend to any entity that exercises editorial judgment. *See, e.g., Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. Of Boston*, 515 U.S. 557, 574 (1995) (finding that a private parade could not be forced to include a group whose message it disagrees with); *Pac. Gas & Elec. Co. v. Pub. Util. Comm’n of Cal.*, 471 U.S. 1, 16 (1986) (extending speech protections to corporate speakers). Because HB 3420 interferes with Squabble’s editorial judgments as to what content to disseminate and how to disseminate it, it violates Squabble’s First Amendment rights.

In *Tornillo*, this Court found that a Florida statute that created a right for a political candidate who had been criticized in the press to respond in the same publication was an unacceptable restriction of editorial judgment, and thus a restriction of speech in violation of the First Amendment. *Tornillo*, 418 U.S. at 258. By interfering with the choice of material to be

published, as well as the size and content of the paper, the statute operated as a government restraint on editorial judgment and therefore violated the First Amendment. *Id.*

Like the newspaper in *Tornillo*, Squabble exercises editorial judgment through its decisions in content publication and structure. *Id.* Because Squabble is using the screening process to make content decisions, the screening process is an exercise in editorial judgment. *Id.* Squabble screens through content to find violations of its terms and conditions. (R at 4). It uses levels of progressively rigorous screening which ends with a human review board. (R at 4). This choice as to what content to disseminate through the site is an exercise of speech. *Sorrell*, 564 U.S. at 570. Additionally, like the newspaper in *Tornillo*, Squabble exercises editorial judgment in its structure of disseminating content, which is protected by the First Amendment. *Tornillo*, 418 U.S. at 258. Squabble does this through its unique split-screen homepage and the decision not to allow direct messaging between users. (R at 5). Because Squabble exercises its judgment through its content publication and structure decisions, it is protected by the First Amendment.

B. Squabble’s Message Is Protected by the First Amendment

Interference with an entity’s message is a violation of the First Amendment. *See Hurley*, 515 U.S. at 574 (finding a First Amendment violation in a law that required a parade to include a group that went against its collective message). Speech regulations that incur costs to entities by causing them to change their content publishing can chill freedom of speech and lead to First Amendment violations. *See Tornillo*, 418 U.S. at 257 (finding unconstitutional a law which “dampened the vigor of public debate” by requiring a newspaper to change its publishing methods and host content contrary to its values); *see also Pac. Gas*, 471 U.S. at 16 (finding that “forced response[s]” are antithetical to the First Amendment).

HB 3420 would interfere with Squabble’s exercise of editorial discretion and message by incurring costs on Squabble’s site and chilling Squabble’s contribution to the public discourse in

violation of the First Amendment. *Hurley*, 515 U.S. at 574; *Tornillo*, 418 U.S. at 257; *Pac. Gas*, 471 U.S. at 16. Squabble’s editorial judgments convey and advance its message of “Truth” by prohibiting “verifiably false information or links to verifiably false information.” (R at 20). Squabble further upholds its message through its personnel and user decisions. Squabble has terminated employees whose actions do not uphold its motto. (R at 5). Squabble has users agree to its terms and conditions, which require that users go through content filters before posting content. (R at 4). These editorial judgments create a message by fostering a community centered around Squabble’s motto and are protected under the First Amendment. *Hurley*, 515 U.S. at 558.

HB 3420 forces Squabble to either drastically alter its review process or cause it to change the site entirely, incurring enormous costs along the way. *See Tornillo*, 418 U.S. at 257. Just as the law in *Tornillo* required the newspaper to change its processes, HB 3420 requires Squabble to alter its algorithm significantly. *Id.* at 256. Currently, Squabble’s algorithms monitor only for violations of its terms and conditions. (R at 4). This monitoring is applied equally across all users, from political activists to movie stars. (R at 5-6). As an illustration of the difficulty that HB 3420 creates, it requires Squabble to tailor its algorithm to not exclude broadly defined “journalistic enterprises,” yet carves out an exception for “obscenity” and “pornography.” (R at 21-22). However, some journalistic enterprises could publish content involving the undefined (within HB 3420) concepts of obscenity or pornography. If Squabble makes an incorrect decision, it could face up to a \$5 million fine. (R at 22). This is just one hypothetical that Squabble must consider, which results in significant costs in expanding the review process.

HB 3420 further costs Squabble money by forcing it to host content contrary to its values. *See id.* HB 3420 forces Squabble to publish content they would not like to publish and possibly face the “penalty of a compelled reply,” which would take space away from preferred material

and be contrary to the values of the First Amendment. *Id.*; *Pac. Gas*, 471 U.S. at 16. This content takes up space on Squabble’s servers. It crowds the site with posts that go against the community values that Squabble fosters and possibly forces Squabble to take up space by commenting a disclaimer. Because HB 3420 forces Squabble to publish content contrary to its values, it could drive users away from Squabble, costing them millions.

All these costs that HB 3420 imposes on Squabble chills Squabble’s contribution to the public discourse, as the company’s safest legal option is to change its business model to avoid controversy and accruing penalties. *See Tornillo*, 418 U.S. at 257 (finding that government-enforced right-of-access “dampened the vigor of public debate” because editors would take the safe route of avoiding controversy rather than face accruing penalties). A possible fine of up to five million dollars and costly litigation is certainly enough incentive to take the safe route of avoiding controversy. This cost to the public debate is antithetical to the values of the First Amendment. *Pac. Gas*, 471 U.S. at 16.

II. HB 3420 Triggers Heightened Scrutiny

Government regulations on speech trigger heightened scrutiny depending on whether they are content-based or content-neutral. *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 642 (1994). A law is content-based when it regulates speech because of “disagreement with the message [the speech] conveys.” *Id.* (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)). A content-based law distinguishes favored speech from disfavored speech based on the views expressed. *Id.* Content-based regulations are subject to strict scrutiny, while content-neutral regulations are subject to intermediate scrutiny. *Id.*

A. HB 3420 Triggers Strict Scrutiny Because It Is Content-Based

Laws that impose differential burdens on speech or compel speakers to distribute speech bearing a particular message are subject to “the most exacting scrutiny.” *Id.* HB 3420 triggers

strict scrutiny because it forces Squabble to distribute speech based on the content of user posts. HB 3420 does not allow Squabble to remove any posts by any broadly defined “journalistic enterprise” based on “the content of their publication or broadcast.” (R at 21). This would force Squabble to publish any speech from a journalistic enterprise, even when the post goes against Squabble’s values. This directly interferes with Squabble’s right to decide what not to say, an important materialization within the principles of freedom of speech. *See Pac. Gas*, 475 U.S. at 16 (stating that “the choice to speak includes with it the choice of what not to say”). This differential burden between journalistic enterprises and other enterprises triggers strict scrutiny.

B. HB 3420 Triggers Intermediate Scrutiny Because It Is, at Minimum, a Content-Neutral Government Regulation on Speech

A content-neutral regulation on speech will trigger intermediate scrutiny. *Turner*, 512 U.S. at 642. Content-neutral regulations on speech are regulations that are justified without reference to the speech’s content. *Sorrell*, 564 U.S. at 566 (citation omitted). If HB 3420 is not considered content-based, it must then trigger intermediate scrutiny. HB 3420 is a regulation on speech, as it does not allow Squabble to exercise its editorial judgment in its content publication and interferes with its publishing structure. *Tornillo*, 418 U.S. at 258. The California legislature has provided no valid justification for HB 3420, as the idea of neutrality in social media sites cannot be a justification. *See id.* at 256 (stating that “press responsibility . . . cannot be legislated.”). Because the government is regulating Squabble’s speech without a justification, HB 3420 is subject to at least intermediate scrutiny.

C. HB 3420 Cannot Avoid Heightened Scrutiny, as Squabble Is Not Just a Host for Its Content Under *PruneYard* and *Rumsfeld*

The Fourteenth Circuit erred in concluding that Squabble does not exercise editorial judgment and HB 3420 is not subject to heightened scrutiny. The panel majority centered its argument around Squabble lacking a specific message and acting as a host for its content, citing

PruneYard and *Rumsfeld*. *PruneYard Shop'g Ctr. v. Robins*, 447 U.S. 74, 88 (1980) (finding that a shopping center owner's First Amendment rights were not violated in allowing private speakers to circulate fliers on the center premises, as the owner did not display any specific message on the property and could publicly dissociate himself from the views of the speakers; *Rumsfeld v. Forum for Acad. & Inst. Rights, Inc.*, 547 U.S. 47, 65 (2006) (finding constitutional a law conditioning federal law school funding on giving military recruiters the same access to campus and students as nonmilitary recruiters, as it did not compel schools to speak the government's message and the conduct regulated by the law was not inherently expressive).

Neither the center in *PruneYard* nor the law schools in *Rumsfeld* exercised any editorial judgments as to any message, nor were they forced to display speech that violated any existing standard. *PruneYard*, 447 U.S. at 88; *Rumsfeld*, 547 U.S. at 65. Unlike those venues, Squabble's editorial judgments convey its motto of "Truth" by prohibiting "verifiably false information or links to verifiably false information." (R at 21). Thus, the First Amendment protects Squabble and HB 3420 requires heightened scrutiny. *Hurley*, 515 U.S. at 574; *Sorrell*, 564 U.S. at 566.

Further, Squabble cannot easily disassociate itself from user content, unlike the venues in *PruneYard* and *Rumsfeld*. *PruneYard*, 447 U.S. at 88; *Rumsfeld*, 547 U.S. at 65. The site does not have a direct messaging component, meaning that public posts are the only method of communication on the site. (R at 5). Squabble puts a visible watermark on every post. (R at 5). These features mean that Squabble actively associates itself with its users' content, rather than traditionally disavowing itself from user content.

III. HB 3420 Cannot Satisfy Any Form of Heightened Scrutiny Because the Government Offers No Substantial Interest Unrelated to the Suppression of Free Speech and It Is A Greater Than Essential Restriction

Regardless of the Court's conclusion as to strict or intermediate scrutiny, HB 3420 cannot stand. Under strict scrutiny, a restriction on speech can only be upheld if it is narrowly tailored to

serve a compelling state interest. *McIntyre v. Ohio Elects. Comm’n*, 514 U.S. 334, 347 (1995).

Under intermediate scrutiny, a speech regulation must, at minimum, further “an important or substantial government interest...unrelated to the suppression of free expression” and the restriction must be “no greater than is *essential* to the furtherance of that interest.” *Turner*, 512 U.S. at 662 (emphasis added) (quoting *U.S. v. O’Brien*, 391 U.S. 367, 377 (1968)).

A. The Government Offers No Compelling or Substantial Interest

The government offers two interests for HB 3420. The first is to combat unfair viewpoint-based private censorship on social media platforms. (R at 21). The second is to promote the “widespread dissemination of information from a multiplicity of sources.” *Turner*, 512 U.S. at 662. However, neither is substantial enough to pass heightened scrutiny.

The first interest the government posits is to combat unfair viewpoint-based censorship by social media platforms. Governor Sloan stated HB 3420 “reign[s] in social media companies’ ideologically biased decisions” on content moderation. (R at 6). This interest cannot satisfy heightened scrutiny, as it turns on a pure difference in opinion. *See Sorrell*, 564 U.S. at 579 (state interest in burdening speech of pharmaceutical detailers was not legitimate because the challenged law would not prevent misleading speech, and thus it turned on “nothing more than a difference of opinion). While the state of California is entitled to its opinion, it cannot “burden the speech of others in order to tilt public debate in [its] preferred direction.” *Id.* at 578-79; *see also Pac. Gas*, 475 U.S. at 20 (the state “cannot advance some points of view by burdening the expression of others”). Thus, this interest is not substantial.

Another interest the government posits is to promote the “widespread dissemination of information from a multiplicity of sources.” *Turner*, 512 U.S. at 662. However, this interest is not substantial enough to satisfy heightened scrutiny. In *Turner*, the Court found a substantial interest in preventing cable companies with monopoly powers from limiting access to local

broadcasts. *Id.* at 663. However, there is no threat of monopoly power here. Calypso can reach millions of people through ACNews or other social media such as Twitter or YouTube. (R at 3). Rather, Squabble is analogous to the parade in *Hurley* – an “enviable vehicle” for disseminating a person’s views. *Hurley*, 515 U.S. at 577. But that alone cannot support the claim of monopoly-level power. Calypso finds himself in a similar situation as the newspaper in *Tornillo*, where an “obvious solution” would be to have “additional newspapers.” *Tornillo*, 418 U.S. at 251. While at that time, the financial realities of newspapers made this solution unfeasible, it is possible in this context. ACNews can act as its own “newspaper” to disseminate its content. Because there is no threat of monopoly power, this interest is not substantial enough to pass heightened scrutiny.

B. HB 3420 Is Not “Unrelated to Suppression of Free Speech” and Is Greater Than Essential to the Furtherance of Any Government Interest

Even if the government could posit an interest substantial enough to pass intermediate scrutiny, HB 3420 is neither “unrelated to the suppression of free expression” nor is it “no greater than essential.” *Turner*, 512 U.S. at 662. As stated by Governor Sloan, the intent of HB 3420 is to alter how social media platforms like Squabble exercise editorial discretion (R at 6). This is a method of free expression. *See Tornillo*, 418 U.S. at 258. Because HB 3420 directly affects Squabble’s editorial discretion, HB 3420 cannot be “unrelated to the suppression of free expression.” Additionally, HB 3420 would allow posts by journalistic enterprises that the First Amendment does not protect. Outside of the undefined exceptions for obscenity and pornography, users can post materials such as hate speech or calls for violence under HB 3420. Furthermore, HB 3420 arbitrarily cuts off social media platforms with under one hundred million unique monthly users or under one hundred million dollars in annual revenue. (R at 21). The government does not posit any justifications for how the statute was tailored to be “no greater than essential.” However, the comments by Governor Sloan are dispositive – the goal was to

punish social media companies' expression, not to advance any government interest. As a result, HB 3420 is a greater than essential restriction in furthering government interests.

Conclusion

For the foregoing reasons, this Court should overturn the judgment of the Court of Appeals for the Fourteenth Circuit and hold that HB 3420 violates Squabble's First Amendment right to freedom of speech.

Respectfully Submitted,

Attorney for Petitioner

Applicant Details

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 Date of JD/LLB **May 10, 2024**
 Class Rank **I am not ranked**
 Law Review/Journal **Yes**
 Journal(s) **UCLA Law Review**
 Moot Court Experience **Yes**
 Moot Court Name(s) **UCLA Moot Court Honors Board**

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June 12, 2023

The Honorable Juan Ramon Sánchez
United States District Court for the Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106

Re: Clerkship – 2024-2025 Term

Dear Judge Sánchez:

I am an incoming third-year law student at UCLA School of Law, and I am writing to express my interest in a clerkship in your chambers for the 2024-2025 term. I intend to pursue a career in public service, and I am particularly interested in clerking for your chambers given your extensive work as a public defender and judicial service both in state and federal court.

My experience coupled with my academic success will make me a strong candidate for this position. Prior to law school, I worked on several political campaigns in positions of increasing seniority. I joined my first campaign as a full-time employee while completing my undergraduate degree in Political Science and Economics at Columbia University, where I was a full-time student. I was also a Staff Writer on the Columbia Daily Spectator, reporting on issues affecting first generation and low-income students. Balancing my studies, extracurricular activities, and work taught me invaluable time management and prioritization skills as well as how to work with others towards common goals.

While at UCLA School of Law, I had the opportunity to extern for both Magistrate Judge Patricia Donahue in the U.S. District Court for the Central District of California and Judge Alexander C.D. Giza in Los Angeles County Superior Court. In these positions, I researched and drafted memoranda, screening orders, and reports and recommendations on issues such as prisoner civil rights, the de-designation of confidential discovery, and special immigrant juvenile status. I also prepared case summaries, observed trials, and regularly conferred with Judge Donahue and Judge Giza. These experiences showed me the impact both federal and state courts have in administering justice.

I have further continued to hone my legal research, writing, and analytical skills through my work with Professor Fernán Restrepo as a Research Assistant, and by serving as an Editor on the *UCLA Law Review* and as a member of the UCLA Law Moot Court Honors Board. During my Summer Associate position at Milbank LLP this summer, I will continue to enhance my skillset.

Enclosed please find a copy of my resume, transcript, writing sample, as well as letters of recommendation from Professor Stephen Gardbaum, Professor Fernán Restrepo, and Professor Sarah Wetzstein. Thank you for your time and consideration. I look forward to hearing from you.

Respectfully,



Blanca Andrei

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EDUCATION

UCLA School of Law, Los Angeles, CA

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Honors: UCLA Law Review, *Associate Editor*; Moot Court Honors Board, *Assistant*

Activities: 1L Moot Court, *Participant*; Business Law Association, *Member*; Voting Rights & Political Law Society, *Board Member*; El Centro Legal, *Education Clinic Volunteer*; Law Women, *Member*

Columbia University, New York, NY

B.A., Economics, May 2019 | GPA: 3.65

Honors: Dean's List (Fall 2016, Spring 2018, Fall 2018, Spring 2019)

Activities: Columbia Daily Spectator, *Staff Writer* (2016-2018)

PROFESSIONAL EXPERIENCE

Milbank LLP

Summer Associate

Los Angeles, CA
May 2023 - Present

UCLA School of Law

Research Assistant, Professor Fernán Restrepo

Los Angeles, CA
September 2022 - June 2023

- Conducted legal research on specific performance in M&A litigation and de facto partnerships.
- Coded cases and built a database of case law to support Professor Restrepo in his research.

U.S. District Court for the Central District of California

Judicial Extern to the Honorable Patricia Donahue

Los Angeles, CA
January 2023 - May 2023

- Conducted legal research and drafted memoranda, orders, reports and recommendations on Section 1983 civil rights cases and discovery disputes.
- Observed oral arguments in criminal and civil cases and discussed with Judge Donahue and her clerks.

Los Angeles County Superior Court

Judicial Extern to the Honorable Alexander C.D. Giza

Los Angeles, CA
June 2022 - August 2022

- Conducted legal research and drafted memoranda and case summaries on matters involving special immigrant juveniles, domestic violence, and child custody.
- Observed oral arguments and discussed with Judge Giza.

Andrea Campbell for Boston Mayor

Finance Director

Boston, MA
January 2021 - June 2021

- Designed and executed a \$1.2M finance plan and supervised all fundraising.
- Managed the finance team and served on campaign senior leadership.

Biden for President

Regional Finance Associate

New York, NY
July 2020 - November 2020

- Managed fundraising operations for Artists for Biden, a \$5M art sale featuring 100+ American artists.
- Facilitated major donor giving to the Biden Victory Fund and the Biden Action Fund.

Pete for America

Regional Investment Associate

Chicago, IL
November 2019 - March 2020

- Facilitated political giving in support of Pete for America across 25 states in the Midwest and South.
- Organized large scale events featuring the candidate and various surrogates in the Midwest and South.

Gillibrand for President/Gillibrand for Senate

Regional Finance Associate

New York, NY
May 2018 - September 2019

- Drafted Senator Gillibrand's briefing materials and handled financial compliance.
- Organized and supported events with Senator Gillibrand in New York, New Jersey, and Connecticut.

INTERESTS

Enjoy running, playing the New York Times Spelling Bee, cooking over-the-top dinners, and reading fiction.

Student Copy / Personal Use Only | [005659742] [ANDREI, BLANCA-TZIPORA]

University of California, Los Angeles
LAW Student Copy Transcript Report

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This is an **unofficial/student copy** of an academic transcript and therefore does not contain the university seal and Registrar's signature. Students who attempt to alter or tamper with this document will be subject to disciplinary action, including possible dismissal, and prosecution permissible by law.

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Program of Study

Admit Date: 08/23/2021
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Major:
LAW
Specializing in BUSINESS LAW

Degrees | Certificates Awarded

None Awarded

Previous Degrees

None Reported

California Residence Status

Resident

Student Copy / Personal Use Only | [005659742] [ANDREI, BLANCA-TZIPORA]

Fall Semester 2021

Major:
LAW

| | | | | |
|-----------------------------|------------|------------|------------|------------|
| CONTRACTS | LAW 100 | 4.0 | 13.2 | B+ |
| INTRO LEGL ANALYSIS | LAW 101 | 1.0 | 0.0 | P |
| LAWYERING SKILLS | LAW 108A | 2.0 | 0.0 | IP |
| Multiple Term - In Progress | | | | |
| PROPERTY | LAW 130 | 4.0 | 14.8 | A- |
| CIVIL PROCEDURE | LAW 145 | 4.0 | 13.2 | B+ |
| | | <u>Atm</u> | <u>Psd</u> | <u>Pts</u> |
| | Term Total | 13.0 | 13.0 | 41.2 |
| | | | | <u>GPA</u> |
| | | | | 3.433 |

Spring Semester 2022

| | | | | |
|-----------------------------|------------|------------|------------|------------|
| LGL RSRCH & WRITING | LAW 108B | 5.0 | 18.5 | A- |
| End of Multiple Term Course | | | | |
| CRIMINAL LAW | LAW 120 | 4.0 | 13.2 | B+ |
| TORTS | LAW 140 | 4.0 | 13.2 | B+ |
| CONSTITUT LAW I | LAW 148 | 4.0 | 14.8 | A- |
| AMER LEGAL THOUGHT | LAW 165 | 1.0 | 0.0 | P |
| | | <u>Atm</u> | <u>Psd</u> | <u>Pts</u> |
| | Term Total | 18.0 | 18.0 | 59.7 |
| | | | | <u>GPA</u> |
| | | | | 3.512 |

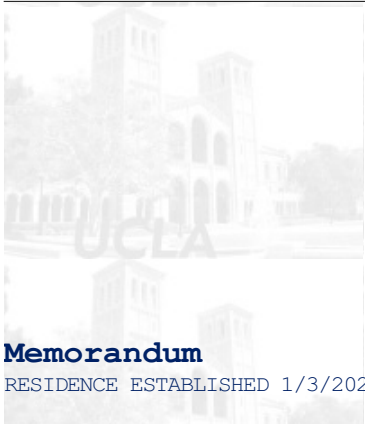
Fall Semester 2022

| | | | | |
|---------------------|------------|------------|------------|------------|
| EVIDENCE | LAW 211 | 3.0 | 11.1 | A- |
| INTRO FED INCOME TX | LAW 220 | 4.0 | 13.2 | B+ |
| BUSINESS ASSOCIATNS | LAW 230 | 4.0 | 16.0 | A |
| PRETRIAL CIVIL LIT | LAW 700 | 4.0 | 0.0 | P |
| | | <u>Atm</u> | <u>Psd</u> | <u>Pts</u> |
| | Term Total | 15.0 | 15.0 | 40.3 |
| | | | | <u>GPA</u> |
| | | | | 3.664 |

Spring Semester 2023

| | | | | |
|---------------------|------------|------------|------------|------------|
| SECURITIES REGULATN | LAW 236 | 4.0 | 16.0 | A |
| JOURNAL LEADERSHIP | LAW 347 | 2.0 | 0.0 | P |
| LAW & POL ECON DEBT | LAW 666 | 3.0 | 12.0 | A |
| PART-TIME EXTERNSHP | LAW 801 | 6.0 | 0.0 | P |
| EXTN SEMINAR: JUDGE | LAW 806 | 1.0 | 0.0 | P |
| | | <u>Atm</u> | <u>Psd</u> | <u>Pts</u> |
| | Term Total | 16.0 | 16.0 | 28.0 |
| | | | | <u>GPA</u> |
| | | | | 4.000 |

Student Copy / Personal Use Only | [005659742] [ANDREI, BLANCA-TZIPORA]



LAW Totals

| | <u>Atm</u> | <u>Psd</u> | <u>Pts</u> | <u>GPA</u> |
|---------------------------|------------|------------|------------|------------|
| Pass/Unsatisfactory Total | 15.0 | 15.0 | N/a | N/a |
| Graded Total | 47.0 | 47.0 | N/a | N/a |
| Cumulative Total | 62.0 | 62.0 | 169.2 | 3.600 |
| Total Completed Units | 62.0 | | | |

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Missing Valid Seal

END OF RECORD
NO ENTRIES BELOW THIS LINE



SARAH R. WETZSTEIN
LECTURER IN LAW

SCHOOL OF LAW
BOX 951476
LOS ANGELES, CALIFORNIA 90095-1476
Phone: (310) 206-1093
Email: wetzstein@law.ucla.edu

May 31, 2023

Dear Judge:

I write in support of Blanca Andrei's clerkship application. Blanca was a student in my Legal Research and Writing class when she was a first-year law student at the UCLA School of Law, and I was fortunate to teach her again in the fall of her second year when she took my Pretrial Civil Litigation Skills class. I have gotten to know Blanca well as both a student and as an individual over the last two school years and have every confidence that she will thrive as a clerk if given the opportunity.

At UCLA Law, Legal Research and Writing is a demanding year-long, five-credit course. The year that Blanca took my Legal Research and Writing class, I required my students to complete numerous ungraded research and writing exercises and assignments, one graded research assignment, two graded writing assignments, and an ungraded negotiation exercise.

Blanca excelled in my class. She grasped concepts quickly and was able to apply what she learned to exercises and assignments. As a result, she earned an A- in my class. But more notable to me than Blanca's strong final grade is the hard work and deep thinking I saw her put in over the course of the year to earn that grade.

From the start, Blanca was always prepared for class, participated meaningfully in class discussions and group work, and came to office hours to talk in more depth about the material. The ungraded research and writing assignments that Blanca turned in throughout the year reflected thoughtfulness and attention to detail. Blanca did well on her first semester graded writing assignment but not as well as she wanted. Instead of being discouraged, Blanca came to talk to me about her analysis and writing, sought out my feedback, and implemented the changes and strategies we discussed. Blanca's efforts paid off by earning her among the highest scores in her section on her final graded writing assignment and a perfect score on her final graded research assignment.

When I got my roster for my Pretrial Civil Litigation class in the fall of 2022, I was happy to see Blanca's name on the list. In Pretrial Civil Litigation, students learn about the pretrial process including case strategy, discovery, pretrial motions, and settlement.

Students participate in simulations to practice litigation skills such as interviewing clients, taking and defending depositions, arguing motions, and negotiating settlements.

As in Legal Research and Writing, Blanca was an engaged, positive member of my Pretrial Civil Litigation class. She asked thoughtful questions in class, worked well with others during group exercises, and took our skills simulations seriously (which was not the case for all students, as this was a pass/fail class). Blanca's deposition and oral argument skills stood out as among the best in the class. Nonetheless, she worked hard to improve each skill we practiced. She accepted feedback with grace and self-

May 31, 2023

Page 2

awareness and asked insightful questions about assignments and the practice of law. Blanca was an all-around pleasure to have in class.

On a personal level, I have enjoyed getting to know Blanca. Blanca is smart, determined, personable, and an all-around impressive young woman. I believe that Blanca will be an excellent litigator and, after talking extensively with Blanca, I think clerking would be the perfect next step for her. Furthermore, and perhaps most importantly to you, I have no doubt that Blanca will excel as a clerk if given the chance.

Please reach out if I can provide any additional information about Blanca.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah R. Wetzstein", with a long horizontal flourish extending to the right.

Sarah R. Wetzstein
Lecturer in Law
UCLA School of Law

UCLA School of Law

FERNÁN RESTREPO
ASSISTANT PROFESSOR OF LAW

SCHOOL OF LAW
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LOS ANGELES, CALIFORNIA 90095-1476
Phone: (650) 283-5952
fernán.restrepo@law.ucla.edu

May 12, 2023

To whom it may concern:

I am absolutely pleased to recommend Blanca Andrei for a position as a judicial clerk at your court. I met Blanca in the fall of 2022, when she took the Business Associations class with me and began assisting me with a research project on specific performance litigation in mergers and acquisitions. Blanca was an outstanding student in the class (as a result of which she earned an “A” grade), and she has been a research assistant with whom it is simply a pleasure to work. Blanca is extremely talented, hard-working, careful with the details, and charismatic. I am sure that you would enjoy having Blanca as a clerk, so I am recommending her with the highest possible level of enthusiasm.

By way of background, I am an Assistant Professor of Law at the University of California – Los Angeles (UCLA), where I teach and research on corporate and securities law. My research examines how the law affects economic efficiency and how economic factors affect the law. Before joining the UCLA faculty, I completed a Ph.D. in Development Economics at the University of Cambridge, a doctorate in law (J.S.D.) at Stanford Law School, a master’s degree in law (LL.M.) at Harvard Law School, a master’s degree in statistics (M.Sc.) at Stanford University, an undergraduate degree in law (LL.B.) at Universidad Javeriana in Colombia, and an undergraduate degree in economics (B.A. in Economics) at Universidad de los Andes in Colombia.

In the Business Association class, I introduce the students to the foundations of business law in the United States. We cover the basic characteristics of partnerships and business entities that stand between partnerships and corporations (i.e., LPs, LLPs, and LLCs), and then we focus on corporations – the most complex form of business organization. As a faculty member at UCLA, my research and teaching significantly focus on the topics we cover in class.

Blanca’s exam in Business Associations was excellent. It was clear and well-structured, and it demonstrated that she masters all the topics we covered in the semester. Blanca answered correctly *all* the multiple choice-questions and her essay identified *nearly all* the key issues involved in the hypotheticals. In addition, Blanca submitted all the formative assessments (which were not mandatory) and did an excellent job in all of them. I think all these factors demonstrate not only that, as mentioned, Blanca masters all the key concepts of the course, but also that she is a quick learner, someone who works in a consistent manner, and someone who will do more than what you expect to ensure that projects are successfully completed.

Blanca also took the Securities Regulation class with me in the spring of 2023. This is a course in which I introduce students to public offerings, offerings that are exempt from federal registration, secondary distributions of securities, liability under the Securities Act and the Securities Exchange Act, and insider trading. While the grades for this course have not been processed yet, I am sure that Blanca was one of my top students. Her work during the semester was excellent, so I am confident that her exam will reflect that as well.

As mentioned, Blanca has been my research assistant since the fall of 2022. She first assisted me with a project on specific performance litigation and then we moved to a project on de facto partnerships. Both projects were empirical, so they required significant effort and care in the data-collection process. But in this

May 19, 2023

Page 2

position again, Blanca was impeccable. She was very organized and efficient, and she always ensured that all the goals of the project were achieved.

I also would like to mention that Blanca brings a special skillset to the table. She has background in business and economics, so she is someone that easily and quickly appreciates the economic factors that shape contracts and litigation. And as a UCLA student, she has taken significant coursework in business law subjects that can be dense and technical, so she is in an excellent position to offer doctrinal assistance with disputes involving complex business transactions.

Finally, I would like to point out that Blanca has a personality with which you will certainly enjoy working. She is very charismatic, flexible, respectful, and receptive, so I think she is the kind of person you would like to have around when working on complex and consequential decisions.

I would like to keep this letter relatively brief, so I will stop here. However, please let me know if I can help with more information about Blanca's case. I would be very happy to expand on my enthusiasm for her candidacy even further.

All the best,

Fernán Restrepo

Assistant Professor of Law

University of California – Los Angeles

fernan.restrepo@law.ucla.edu

UCLA School of Law

STEPHEN GARDBAUM
STEPHEN YEAZELL ENDOWED CHAIR IN LAW
FACULTY DIRECTOR, PROMISE INSTITUTE FOR HUMAN RIGHTS

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April 17, 2023

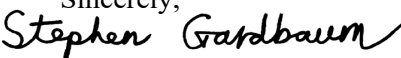
Dear Judge:

I write to convey my extremely strong and enthusiastic support for Blanca Andrei's application for a clerkship with you.

Ms. Andrei is an outstanding second year student at UCLA School of Law, where she is specializing in business law. I got to know her when she was a student in my first-year Constitutional Law I course last academic year. She was an exceptional, indeed a model, member of the class in every way, exhibiting a keen and first-rate analytical mind, as well as passionate engagement with the subject-matter, in her many insightful and powerful contributions to class discussion. Ms. Andrei was also a regular and active visitor to my office hours, which enabled me to form a deeper impression of her abilities and commitments.

Ms. Andrei's research and writing skills have been honed while working as a judicial extern for both Magistrate Judge Patricia Donahue of the U.S. District Court for the Central District of California and Judge Alexander C. D. Giza of the Los Angeles Superior Court. She is also currently serving as a research assistant to my colleague Professor Fernan Restrepo, an Editor on the *UCLA Law Review*, and a member of the UCLA Moot Court Honors Board. Her profound commitment to public service and to putting her legal training to use in the community is evident in her volunteering for the El Centro Legal Clinic, serving as a Board Member of the law school's Voting Rights & Political Law Society, and her earlier work on several political campaigns. As her record discloses, Ms. Andrei is a highly motivated person and an extremely hard worker. She is also a very likeable and thoughtful person. I am completely confident that she will be an outstanding, diligent, thoroughly dependable, and altogether memorable law clerk. I urge you to interview and meet her, and find out for yourself what a special person she is.

In sum, I recommend Blanca Andrei to you in the highest possible terms. Please let me know if I can be of any further help to you in considering her application.

Sincerely,


Stephen Gardbaum
Stephen Yeazell Endowed Chair in Law
Faculty Director, Promise Institute for Human Rights

BLANCA ANDREI

917-971-3075 | andrei2024@lawnet.ucla.edu | 925 S. Barrington Avenue, Apt. 5, Los Angeles, CA 90049

WRITING SAMPLE

As a judicial extern to Magistrate Judge Patricia Donahue in the Central District of California, I drafted the attached memorandum for Judge Donahue. The memorandum examined whether the Court should grant a plaintiff's motion to de-designate discovery material as confidential under a stipulated protective order pursuant to Federal Rule of Civil Procedure 26(c).

This memorandum is self-edited and constitutes original work product. To preserve confidentiality, I have changed names, locations, dates, and docket numbers. I have received permission from Judge Donahue to use this memorandum as a writing sample.

MEMORANDUM

FROM: Blanca Andrei, Extern
TO: Hon. Patricia Donahue
DATE: April 11, 2023
RE: Doe v. City of New Town, et al.

I. INTRODUCTION

On July 16, 2020, Plaintiff John Doe (“Plaintiff”), a veteran of the U.S. Army, filed a Complaint pursuant to 42 U.S.C. §§ 1983 and 12101 against Defendants City of New Town (“City”), New Town Police Department (“NTPD”) Officer Adams, and NTPD Officer Bell. [Dkt. No. 101.] Plaintiff alleged violations of his Fourth and Fourteenth Amendment rights due to unconstitutional detention, excessive force, retaliation, and violation of due process, as well as violation of the American with Disabilities Act. [*Id.*] Plaintiff’s allegations center on a welfare check conducted by Defendant officers in response to a call from the Veteran’s Administration (“VA”). [*Id.* at ¶ 1.] Plaintiff alleges that this interaction culminated in his unjust arrest. [*Id.*]

The incident was recorded on the body worn cameras (“BWC”) of Defendant officers and non-party NTPD Sergeant Cane. [Exhibit A, Adams BWC; Exhibit B, Bell BWC; Exhibit C, Cane BWC.] This BWC footage is currently subject to a Stipulated Protective Order. [Dkt. No. 121.] Plaintiff’s motion before the Court arises from a discovery dispute over the de-designation of this BWC footage.

On February 16, 2021, the Court granted the parties’ Proposed Protective Order. [Dkt. No. 121.] Defendant City subsequently produced the BWC footage of the incident pursuant to the Protective Order. [Dkt. No. 158 at 4.] Plaintiff requested that Defendant City de-designate the BWC footage and the parties discussed the matter on September 29, 2022, pursuant to Local Rule 7-3, but could not reach a resolution. [Dkt. No. 158 at 6-7.]

On November 29, 2022, the Court held an informal discovery conference to discuss Plaintiff’s motion to de-designate the BWC footage as confidential. [Civ. Min., November 29, 2022.] The Court asked the parties to submit a Joint Stipulation pursuant to Rule 37 by January 13, 2023. [*Id.*] On January 13, 2023, the parties filed the Joint Stipulation regarding Plaintiff’s Motion to De-Designate the BWC Footage as Confidential (“Motion”). [Dkt. No. 158.]

On February 4, 2023, this Court held a hearing where the Court reviewed and considered the Joint Stipulation [Dkt. No. 158], the docket in this matter, and the arguments of counsel.

[Civ. Min., February 4, 2023.] The Court requested that the parties submit supplemental briefing on the issues discussed at the hearing pursuant to Local Rule 37-3. [*Id.*] The Court requested that Defendants file supplemental briefing no later than February 18, 2023, and that Plaintiff file a response no later than February 25, 2023. [*Id.*] The Court also requested that if Defendants intend to rely on the results of a mental health examination of Plaintiff in their opposition, they lodge a report of the examination by February 28, 2023. [*Id.*].

On February 18, 2023, Defendants filed a Supplemental Opposition to Plaintiff’s Motion. [Dkt. No. 175.] On February 25, 2023, Plaintiff filed a Supplemental Briefing in Support of Plaintiff’s Motion. [Dkt. No. 179.] While Dr. Stephens performed a mental health examination of Plaintiff on February 15, 2023 [Dkt. No. 175 at 1], Defendants have not lodged the report with the Court.

II. QUESTION PRESENTED

Whether there is good cause to maintain the confidentiality of the police BWC footage under the Stipulated Protective Order pursuant to Rule 26(c)? If the Defendants have failed to meet their burden of demonstrating good cause, can the Court, allowing public disclosure, order the parties to redact the police BWC footage to protect the privacy interests of third-parties?

III. BRIEF ANSWER

Defendants have failed to meet their burden of establishing good cause to maintain the confidentiality of the police BWC footage. Therefore, this Court must grant Plaintiff’s Motion and allow for the public disclosure of the BWC footage. However, this Court may order the parties to redact the footage in the interest of protecting the privacy rights of third-parties.

“If a party takes steps to release documents subject to a stipulated order, the party opposing disclosure has the burden of establishing that there is good cause to continue the protection of the discovery material.” *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 424 (9th Cir. 2011). First, the court must determine whether the party opposing disclosure has demonstrated that “particularized harm will result from disclosure of the information to the public.” *Id.* Second, if the court concludes that particularized harm will result from disclosure of the discovery documents, the court must balance the public and private interests to determine whether there is good cause for maintaining the protective order. *Id.* Finally, even if these factors weigh in favor of maintaining the confidentiality of the discovery